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**The decision-making process in EU policy towards the Eastern
neighbourhood: the case of immigration policy**

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**Thesis Submitted for the Degree of Doctor of Philosophy in Contemporary
European Studies**

University of Sussex

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Statement:

I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree.

Signature:

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UNIVERSITY OF SUSSEX
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DEGREE OF DOCTOR OF PHILOSOPHY IN CONTEMPORARY EUROPEAN
STUDIES

THE DECISION-MAKING PROCESS IN EU POLICY TOWARDS THE EASTERN
NEIGHBOURHOOD:
THE CASE OF IMMIGRATION POLICY

Summary

This thesis investigates the EU policy-making process concerning the external dimension of migration focusing on the EU's eastern neighbourhood.

In recent years, there has been an increasing emphasis on integrating a comprehensive migration dimension into the broader external policies of the EU. In 2004, the European Neighbourhood Policy (ENP) was developed as an overarching foreign policy tool integrating the EU's existing policies towards its southern and eastern neighbourhood under a single framework with the objective of ensuring security and stability in the EU's neighbourhood. The management of cross-border movements along the EU's new eastern frontiers in particular has moved up on the EU agenda with the eastern shift of the EU borders following the 2004/2007 eastern enlargements. With the increasing integration of migration policy objectives into the EU's broader neighbourhood policy, the EU has progressively established a more streamlined form of cooperation with its immediate eastern neighbours concerning different dimensions of migration policy. The thesis examines the EU policy-making process with the aim of answering the question of how the EU policy has been shaped in the view of diverging national preferences and institutional roles and influence concerning the external dimension of migration policy. As a salient policy area central to national sovereignty and interest, the EU member states traditionally seek to control the impact of institutional constraints in the area of migration policy and support mechanisms by which they could exert national control over the policy outcomes. On the other hand, the increasing 'communitarisation' of the policy area since the Amsterdam Treaty has enhanced the role of the EU institutions.

Drawing on the new-institutionalist approaches to EU policy-making, the thesis questions a purely intergovernmental understanding of policy-making dominated by the preferences of the member states in the external dimension of EU migration policy.

Abbreviations

BAMF: Federal Office for Migration and Refugees
 CDU: Christian Democratic Union
 CSU: Christian Social Union of Bavaria
 CEE: Central and Eastern Europe
 CEAS: Common European Asylum System
 CFSP: Common Foreign and Security Policy
 COREPER: Committee of Permanent Representatives
 COEST: Working Party on Eastern Europe and Central Asia
 DE: Germany
 DEV: Development
 DFID: Department for International Development
 DG: Directorate-General
 EEAS: European External Action Service
 EaP: Eastern Partnership
 EC: European Community
 ENP: European Neighbourhood Policy
 ENPI: European Neighbourhood Policy Instrument
 EP: European Parliament
 EU: European Union
 FCO: Foreign and Commonwealth Office
 FR: France
 GAERC: General Affairs and External Relations Council
 GDISC: General Directors' Immigration Services Cooperation
 H: Hypothesis
 HLWGIA: High Level Migration Group on Immigration and Asylum
 HR: High Representative
 IOM: International Organization for Migration
 JHA: Justice and Home Affairs
 JLS: Justice, Freedom and Security
 ML: Moldova
 MS: Member States
 OJ: Official Journal
 QMV: Qualified Majority Voting
 PCAs: Partnership and Cooperation Agreements
 PL: Poland
 RELEX: External Relations
 RPPs: Regional Protection Programmes
 SCIFA: Strategic Committee on Immigration, Frontiers and Asylum

SE: Sweden

SP: Soderkoping Process

TEU: Treaty on European Union

TEC: Treaty of the European Community

TFEU: Treaty on the functioning of the European Union

UfM: Union for the Mediterranean

UA: Ukraine

UK: United Kingdom

UKBA: United Kingdom Border Agency

UNHCR: UN Refugee Agency

WNIS: Western Newly Independent States

WP: Working Party

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CHAPTER 1: Introduction

This thesis analyses EU decision-making in the area of external dimension of migration. Within this ‘grey’ policy area between home affairs and external relations policies, the thesis takes a closer look at the intergovernmental and institutional dimensions of EU decision-making processes. Focusing specifically on the EU's migration policy towards Ukraine, Moldova and Belarus within the framework of the European Neighbourhood Policy (ENP), the thesis assesses the relative influence of the EU Member States' policy positions and the EU's institutional framework in the course of the decision-making process. The introduction is formed of three parts. The first part outlines the subject matter of the project, introduces the main research question and explains the selection of the case studies. The second part deals with the research design of the project presenting the conceptualisation of the research question. Finally, the third part introduces the chapter structure of the thesis.

1.1. Aim and Scope

The EU had a relatively weak form of engagement with the Western Newly Independent States (WNIS) after their independence compared to its relations with Russia and the countries of central eastern Europe following the end of the Cold War in 1989.¹ In the past decade, the eastern shift of the EU borders in 2004 and 2007 paved the way for a significant increase in the political and financial commitment of the EU in the WNIS region. In the early 2000s, an EU level debate was launched regarding the need to enhance security and stability in the broader eastern neighbourhood in view of the then forthcoming 2004 enlargement. The EU was committed to reinforcing its cooperation with its new immediate neighbours ‘to avoid new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union’.² There was a shared concern about the repercussions of potential political and economic instabilities along its eastern frontier. Enhanced political and financial

¹ Ukraine, Moldova and Belarus are also known as the Western Newly Independent States (WNIS). The European Union official documents occasionally use this category to refer to these three countries as a group. For simplicity, the thesis will refer to these countries as ‘the eastern neighbours’.

² Council of the European Union, “Copenhagen European Council 12 and 13 December Presidency Conclusions,” 15917/02, January 29, 2003, accessed January 1, 2011, <http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002&bid=76&lang=en&id=>.

commitment to the region was also seen as a way to consolidate the role of the EU both as a regional and international actor through being more involved with its politically and economically unstable eastern neighbourhood. In 2004, the European Neighbourhood Policy (ENP) was put forward as a new foreign policy tool that integrated the EU policies towards the EU's broader neighbourhood under a single framework.³

The geographical scope of the ENP was an issue of high importance due to the diverging regional preferences of the Member States within the neighbourhood. In 2002, the Copenhagen European Council highlighted the commitment of the EU to enhance cooperation with both the enlarged EU's eastern neighbours (involving Russia, Ukraine, Moldova, and Belarus) and the southern Mediterranean neighbours with the aim of encouraging reforms in its near abroad.⁴ Although the initial debates focused solely on the need for restructuring the EU policy towards the new eastern neighbours following the 2004 eastern enlargement, it was clear that a consensus among the Member States depended upon having a balanced approach towards both the southern and eastern neighbours. In March 2003, the European Commission presented the 'Wider Europe- Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours' document.⁵ Despite being offered to both the southern and eastern neighbours, the ENP has gradually adopted a geographically 'differentiated approach'. In 2008, the Union for the Mediterranean (UfM) was launched directed towards the southern neighbours in the leadership of France owing to its particular interest and historical connections with the countries in the region.⁶ Put forward by Poland and Sweden as a joint proposal in 2008, the development of the Eastern Partnership followed the introduction of the UfM to enhance both bilateral and regional cooperation with the six eastern neighbours from Eastern Europe and the Southern

³ The ENP is offered to Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine.

⁴ Council of the European Union, "Presidency Conclusions Copenhagen, 12 and 13 December 2002," 15917/02, 2003, accessed January 1, 2012, <http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002&bid=76&lang=en&id=>.

⁵ European Commission, "Wider Europe-neighbourhood: a new framework for relations with our eastern and southern neighbours," COM (2003) 104 final, 2003, accessed January 1, 2012 http://ec.europa.eu/world/enp/documents_en.htm.

⁶ European Commission, "Barcelona Process: Union for the Mediterranean," COM (2008) 319 final, May 20, 2008, accessed January 2, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0319:EN:HTML>.

Caucasus in 2009.⁷ In terms of geographical scope, the thesis focuses exclusively on the three Eastern European partners, i.e. Ukraine, Moldova and Belarus. The reason for narrowing down on these partner countries is the fact that the EU has had a comparable approach towards these three eastern European countries since the end of the Cold War.⁸ The importance of these countries has increased as the EU has been directly affected by the instabilities in the region after the eastern enlargement.

With the launch of the ENP, the EU and the partner countries committed to strengthening their bilateral relations on a diverse set of policy areas. Owing to the eastern shift of the EU borders following the 2004/2007 enlargements, the management of the cross-border movements along the EU's new eastern frontiers particularly has moved up on the EU agenda. Cooperation with the neighbours concerning migration was deemed as a high priority for the EU's new neighbourhood policy starting from the initial ENP strategy paper and the specific reports that were prepared by the European Commission with respect to the partner countries.⁹ Within this broad foreign policy framework, the EU has progressively established a somewhat streamlined cooperation with the eastern partners in the area of migration.

The literature on the external dimension of the EU's migration policy has laid considerable emphasis on the predominance of intergovernmental cooperation among the Member States due to the notable sensitivity of the policy domain.¹⁰ This state-centric viewpoint clashes with the recent emphasis that has been put on the influence and constraints that are imposed on EU decision-making process by the EU's institutional framework. Despite the rapid communitarisation in the area of migration

⁷ The Eastern Partnership concerns: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. For more information on the Eastern Partnership: http://eeas.europa.eu/eastern/index_en.htm.

⁸ The end of the Cold War brought about a considerable transformation concerning the Union's relations with its eastern neighbours. Although the focuses on the post-1999 period when the policies towards the region were started to be reviewed, a brief review of the EU policy towards the region in the aftermath of the Cold War is presented in Chapter 3.

⁹ European Commission, "European Neighbourhood Policy Strategy Paper," COM (2004) 373 final, 2004, accessed January 1, 2012 http://ec.europa.eu/world/enp/documents_en.htm.

After the launch of the ENP, the European Commission prepared ENP Country Reports for each partner country (except Belarus in the east and a number of countries in the south) reviewing their bilateral cooperation of the EU with them with the aim of identifying the main areas of cooperation. For the ENP Country reports see: http://ec.europa.eu/world/enp/documents_en.htm.

¹⁰ Sandra Lavenex, "EU external governance in 'wider Europe'," *Journal of European Public Policy* 11 no. 4 (2004): 689.

policy over the past decade, the influence of the EU institutions in the area of migration has been overlooked. The objective of the thesis is to understand the EU decision-making process in the area of external dimension of migration examining both the impact of the Member States' official policy positions as well as the EU's institutional framework concerning the policy area. This thesis aims to answer the following question: *'What are the primary determining factors shaping EU decision-making in its policy towards eastern neighbours in the field of immigration?'*

The ENP has attracted considerable scholarly attention. The initial studies focused more on assessing the ability of the policy to transform the EU's neighbourhood rather than investigating particular dynamics of decision-making process in different policy areas that are incorporated into the ENP framework. Parallel to the broader EU external relations literature that has mainly concentrated on 'conceptualisation of the EU as an actor' at the international level¹¹, the literature on the ENP has assessed the potential ability of the EU to promote reform in its 'near abroad' under the ENP framework. Building on the enlargement literature, there are several studies comparing the policy tools of the ENP with the enlargement process particularly in the context of the relations with the immediate eastern neighbourhood.

Both the academic and policy debates regarding the ENP mainly focused on the question as to the degree the ENP as a foreign policy tool could be successful in externalizing the EU's policies and norms without the promise of enlargement particularly with respect to the countries in the eastern neighbourhood that are eligible.¹² In the beginning, cooperation concerning different sectoral areas that are incorporated under the ENP did not receive as much attention as the broad policy framework. As the ENP has gradually transformed into an umbrella policy integrating cooperation with the neighbouring countries in several policy areas with different pace and objectives, there has been increasing scholarly attention to cooperation in specific sectoral areas.¹³ This

¹¹ Ben Rosamond, "Conceptualizing the EU Model of Governance in World Politics," *European Foreign Affairs Review* 10 no.4 (2005): 463–478.

¹² A comprehensive literature review with respect to the ENP is presented in the first section of the following Chapter.

¹³ Sandra Lavenex, "A governance perspective on the European neighbourhood policy: integration beyond conditionality?," *Journal of European Public Policy* 15, no.6 (2008): 938–955; Ulrich

was also linked to the externalisation literature and directed towards the governance and implementation dimensions. There is still a gap concerning detailed studies of decision-making process in different sectoral areas of cooperation in the literature. It is worth noting that it is not the objective of this thesis to provide an evaluation of the EU policies and their effectiveness. Focusing on migration cooperation within the neighbourhood policy, this project aims to identify the primary determining factors concerning the EU decision-making process in the light of the enhanced cooperation with the region since the introduction of the ENP framework. In terms of the legal framework of the decision-making, the thesis focuses mainly on the changes that have been introduced since the introduction of the Amsterdam Treaty in 1999 until the entry into force of the Lisbon Treaty in 2009. However, where relevant, the changes that are brought about by the Lisbon Treaty will also be discussed.

1.1.1. The Migration Cooperation with the Eastern Neighbourhood

In recent years, there has been an increasing emphasis on integrating a comprehensive migration dimension into the external policies of the EU.¹⁴ The EU has made considerable efforts to establish a dialogue in particular with the main countries of origin and transit of migrants. The emphasis has been particularly on the fight against irregular migration into the EU. Since the early 2000s, cooperation in the area of irregular migration has become a precondition for an intensified partnership with the EU.¹⁵ Cooperation with the eastern neighbours of the EU has particularly become important given that the region is identified as an important point of transit for irregular migrants entering the EU.¹⁶ The 2004/2007 enlargements have in particular increased

Sedelmeier, "The European neighbourhood policy: a comment on theory and policy," in *Governing Europe's Neighbourhood*, eds K. Weber, M. Smith and M. Baun (Manchester: Manchester University Press, 2006): 195-208.

¹⁴ The integration of migration policy within the external policies of the Union was first referred at the Tampere Council meeting conclusions in 1999. In 2002, the Seville European Council meeting underlined that 'any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration'.

¹⁵ Council of the European Union, "Presidency Conclusions. Seville, 21 and 22 June 2002," 13463/02, 2002, accessed <http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002&bid=76&lang=en&id=>.

¹⁶ European Commission Staff Working Document, "Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents," SEC(2009) 320 final, 2009.

the concerns of the Member States in relation to the acceleration of migratory pressures from the new eastern neighbours.¹⁷ The extension of the Schengen borders to the new Member States triggered concerns amongst the Member States with respect to the management of cross-border movements along the EU's eastern border. These concerns were particularly shared by the old Member States that have traditionally been subject to high levels of migration from the region.

On the other hand, the facilitation of mobility for the citizens of the eastern neighbours is of high importance to the new EU Member States taking into account their close trade, cultural and social relations and mobility (of people, goods, labour) facilitated by the legacy of visa-free regime in the region prior to their accession to the EU. The integration of the CEE Member States to the Schengen border regime impeded the traditional flexible cross-border relations with their immediate eastern neighbours. To abide by the requirements concerning the accession to the EU and the Schengen border zone, the new Member States had to align their visa policies with the EU and cease all former visa free travel arrangements with their non-EU neighbours.¹⁸ Since their accession, the CEE Member States, Poland in particular, have been pushing for further liberalisation of the EU's migration policy towards the region.

Although the policy positions of the Member States are highly central to the debate, the research aims to look into the influence of the EU's institutional framework to piece together a clearer picture of EU decision-making processes. The main argument in the literature is that the migration policy area has traditionally been dominated by a circle of national actors or 'transgovernmental' networks.¹⁹ As the importance of the issue of migration increased for the Member States since the end of the Cold War, the officials

¹⁷ The EU policy regarding external dimension of immigration, the Global Approach to Immigration, is extended to the eastern and south-eastern neighbours in 2007. Council of the European Union, "Press Release 2808th General Affairs Council Meeting Council Conclusions on extending and enhancing the Global Approach to Migration," Luxembourg, 10654/07, 17-18 June 2007, accessed January 1, 2012 <http://www.consilium.europa.eu/press/press-releases/search?command=d&id=&lang=en&doclang=EN&dockey=94803>.

¹⁸ European Commission, "Comprehensive Monitoring Report for Poland's preparations for membership," 2003, accessed January 1, 2012 http://ec.europa.eu/development/body/organisation/docs/CMR_PL.pdf.

¹⁹ Helen Wallace, "An Institutional Anatomy and Five Policy Models" in *Policy making in the European Union* eds. Helen Wallace, Marc .A. Pollack and Alasdair .R. Young, 6th ed. (Oxford: Oxford University Press, 2010): 102.

from ministries of interior started to cooperate within intergovernmental or transgovernmental networks. Despite the emphasis on ‘sovereignty’, the competences of the EU institutions and their involvement in the decision-making process have gradually increased since the ratification of the Amsterdam Treaty in 1999. Given these observations, the thesis examines the way in which EU decision-making on migration policy regarding the eastern neighbours has been evolved in the view of diverging national preferences and institutional influence.

1.1.2. Case Studies

Thematically, the thesis focuses on four sub-policy areas of cooperation with respect to the external dimension of immigration policy: (i) irregular migration²⁰; (ii) visa cooperation; (iii) labour migration and (iv) asylum cooperation. These areas are chosen based on a review of the EU cooperation with the eastern neighbours in the area of migration, justice and home affairs Action Plans and the corresponding sections of the ENP progress reports.²¹

1.1.2.1. Irregular Migration

The fight against irregular migration has been a priority area of cooperation between the EU and the eastern neighbours.²² Sharing a long land border with the EU after the 2004/2007 enlargements, the region has been considered a major source of and transit for irregular migration into the EU. The return of the irregular migrants residing in the EU to the countries of transit or origin has particularly been an important dimension of migration cooperation with third countries. Conducted traditionally at the national level, the readmission of undocumented migrants over the years has been integrated into EU policy to a great extent. Under the EU level readmission agreements, partner countries

²⁰ It should be noted that some Member States use the term illegal migration instead of irregular migration. In the EU documents, these terms are used interchangeable.

²¹ Although there is not an Action Plan with Belarus, the Commission is given the mandate to start negotiations regarding cooperation in the field of immigration. As it is stated in the ENP Strategy Paper in 2004 and strengthened in the EaP, the bilateral dimension of the policy is conditioned to the development of the level of democracy in the country.

²² European Commission, “Wider Europe–neighbourhood: a new framework for relations with our eastern and southern neighbours”, COM (2003) 104 final, March 11, 2003, accessed January 1, 2012 http://ec.europa.eu/world/enp/documents_en.htm.

are expected to receive back their nationals who are illegally residing in the EU. This is essentially a duty of a state irrespective of a special agreement on readmissions.²³ In addition, these agreements most of the time oblige partner countries to receive undocumented migrants irrespective of their nationality if it is proven that migrants entered the EU through their territory.²⁴

The readmission of third country nationals or stateless persons is much more important in the case of the agreements with neighbouring countries bearing in mind that they are transit countries. The EU has aimed to conclude such agreements with its neighbours that are considered major transit points. Based on these readmission agreements, the EU could return the nationals of partner countries who reside in the EU who do not possess necessary documents or other undocumented migrants irrespective of nationality if it is proven that they have crossed the borders of the partner country to enter the EU. Although readmission agreements are predominantly to the advantage of the EU Member States rather than third countries, they have become a requirement for these countries to advance their relations with the EU. Among the three eastern European neighbours, Ukraine was particularly important for the EU due to its population and the long shared land border. The ENP Action Plans for both Ukraine and Moldova put considerable emphasis on the conclusion of readmission agreements.²⁵ Readmission agreements were concluded with Ukraine and Moldova in 2007 and they became

²³ Jean-Pierre Cassarino, "Beyond Asymmetries: Cooperation on Readmission in the EU neighbourhood" (paper presented at the EUSA Twelfth Biennial International Conference, Boston, Massachusetts, March 3-5, 2011) accessed January 1, 2011
http://euce.org/eusa/2011/papers/3b_cassarino.pdf

²⁴ European Commission, "Commission Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation," COM(2007) 504 final, September 5, 2007, accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0504%2801%29:EN:HTML>;
 European Commission, "Proposal for a Council Decision concerning the signing of the Agreement between the European Community and Ukraine on readmission," COM(2007) 197 final, April 18, 2007, accessed January 1, 2011

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0197:FIN:EN:PDF>.

These agreements are reciprocal as the EU Member States also take responsibility regarding return of irregular migrants that cross their borders. However, it is mainly the EU Member States that use these tools to return irregular immigrants to partner countries.

²⁵ European Commission, "EU/Ukraine ENP Action Plan, 2004 (adopted 21 February 2005); European Commission, "EU/Moldova ENP Action Plan, 2004 (adopted on 22 February 2005).

effective in 2008.²⁶ Due to the EU decision to suspend bilateral relations with Belarus as a result of the undemocratic regime in place, the process to start the readmission agreement negotiations was delayed until the end of 2010. The European Commission was given a mandate to negotiate a readmission agreement with Belarus in February 2011.²⁷

Conducting an analysis of the official policy positions of the Member States and the influence of the EU's institutional framework, the thesis maps out the decision-making process with respect to the EU level common policy on readmission cooperation with the eastern neighbours.

1.1.2.2. Visa Cooperation

Under the Schengen cooperation, short-term stay visas to the participant countries for duration of no more than 90 days have been harmonized.²⁸ Being on the Schengen negative list, the citizens of Ukraine, Moldova and Belarus should be in possession of a visa to travel to the EU.²⁹ The visa requirement for short-term travel for the nationals of the eastern neighbours has particularly become a topical issue at the EU level following the eastern enlargement.

To improve cooperation with the partner countries in the area of fight against irregular migration, the EU has developed the practice of pairing readmission agreement

²⁶ Council of the European Union, "Council Decision of 29 November 2007 concerning the conclusion of the Agreement between the European Community and Ukraine on readmission of persons," OJ L 332/46, December 18, 2007, accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0046:0047:EN:PDF>; Council of the European Union, "2007/826, Council Decision of 22 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation," OJL 334/148, December 19, 2012, accessed January 1, 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0148:0148:EN:PDF>.

²⁷ Council of the European Union, "Council Decision authorising the Commission to open negotiations for the conclusion of a readmission agreement between the European Union and Belarus," 6623/11, May 5 2011, accessed January 1, 2012

<http://register.consilium.europa.eu/pdf/en/11/st06/st06623-ex01.en11.pdf>.

²⁸ As national visas have remained the domain of the Member States, the EU could solely take action with respect to short-term travel. The UK, Ireland and Denmark are excluded from this development due to their opt-out from the parts of the EU acquis that are related to the Schengen agreement.

²⁹ The 2001 Regulation concerns the list of the third countries whose nationals should be in possession of visas to cross external borders and those whose nationals are exempt from that requirement. The list of countries has been amended several times since its adoption.

negotiations and the facilitation of visa requirements for the citizens of the partner countries. Within the framework of the ENP, readmission agreements and visa facilitations have been offered as a package deal. Along with the agreements on the readmission, both Ukraine and Moldova also have signed visa facilitation agreements that ease the procedures and reduce the cost of obtaining a Schengen visa for their nationals.³⁰ The EU has maintained its practice in the case of Belarus as well.

Following the conclusion of the visa facilitation agreements with Ukraine and Moldova, the EU started dialogues with both partners regarding the abolition of the short-stay visa requirement without a strong commitment towards full visa liberalisation.³¹ The negotiations in the EU were highly difficult due to diverging preferences among the Member States. Eventually, an agreement was reached in the EU to adopt Action Plans for these countries in Spring 2010. Action Plans were adopted with Ukraine in 2010 and with Moldova in 2011.

Looking at both the process that brought about the conclusion of the visa facilitation agreements and adoption of the Action Plans on visa liberalisation, the thesis analyses the decision-making particularly in view of the strongly diverging views of different EU actors.

1.1.2.3. Labour Migration

The EU's policy on labour migration³² has been a highly contentious topic given the reluctance of the Member States to transfer their competences to the EU level. The

³⁰ Council of the European Union, "Agreement between the European Community and Ukraine on the facilitation of the issuance of visas - Protocol - Declaration - Joint Declarations," OJ L 332/68, December 18, 2007, accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1218%2802%29:EN:HTML>;
Council of the European Union, "Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas," OJ L 334/169, December 19, 2007, accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1219%2811%29:EN:HTML>.

³¹ As the process towards the conclusion of readmission and visa facilitation negotiations with Belarus has started in early 2011, the visa liberalisation section does not concern the policy towards Belarus.

³² The EU' and Member States' documents and the literature use 'economic migration' and 'labour migration' interchangeably. The term legal migration is also used to refer to a broader concept which includes short and long term stays.

initial communication of the European Commission on the ENP has put forward labour migration opportunities in the EU for the nationals of partner countries as a ‘long term objective’ without making strong commitments.³³ The ENP and the Eastern Partnership frameworks do not have a comprehensive labour migration dimension. However, the EU has taken certain steps towards increasing the link between the ‘fight against irregular migration’ and ‘legal migration’ policy instruments in their cooperation with third countries for a thorough migration management.³⁴ The partner countries that are prepared to take responsibility regarding combating irregular migration and human trafficking, border controls and document security as well as measures with respect to returns and readmissions are offered by the Member States’ cooperation in the area of legal migration.³⁵ The labour migration cooperation with the neighbours is based on voluntary cooperation of both partner countries and the EU Member States. The scope of legal migration cooperation is tailor made based on the needs and circumstances of both sides. Within the WNIS region, the only partner country that has reached a joint agreement with the EU is Moldova.³⁶

The thesis examines the EU policy on labour migration that is incorporated within the ENP framework focusing on the partnership with Moldova.

1.1.2.4. Asylum Cooperation

Although the traditional policy on refugee protection has its roots in international

³³ European Commission, “Wider Europe–neighbourhood: a new framework for relations with our eastern and southern neighbours”, COM (2003) 104 final, 2003, accessed January 1, 2012 http://ec.europa.eu/world/enp/documents_en.htm.

³⁴ Council of the European Union, “Thessaloniki European Council 19 and 20 June 2003 Presidency Conclusions,” 11638/03, October 1, 2003, accessed January 1, 2012 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf.

³⁵ European Commission, “On circular migration and mobility partnerships between the European Union and third countries,” COM (2007) 248 final, May 16, 2007, accessed January 2, 2012 http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2007&nu_doc=248.

³⁶ Council of the European Union, “Joint Declaration on a Mobility Partnership between the European Union and the Republic of Moldova,” 9460/08 ADD 1, May 21, 2008, accessed January 1, 2012 <http://register.consilium.europa.eu/pdf/en/08/st09/st09460-ad01.en08.pdf>.

human rights, the EU policy on asylum has evolved closely linked to migration.³⁷ The EU policy on asylum mainly focuses on the management of the responsibilities among the Member States. Along with this strong internal dimension, the EU has started to cooperate with third countries on the issue of asylum and refugee protection as well. With the aim of increasing the capacity of third countries with respect to the management of asylum applications, the EU has pushed for the concept of ‘international protection’ for refugees.³⁸ The main focus has been on the regions that asylum seekers come from or transit to the EU. In line with this, cooperation with the neighbouring countries has become highly important. Being subject to high levels of asylum applications, the compatibility of its immediate neighbours with the European standards concerning asylum and refugee policies is deemed highly significant for the EU.

In its 2004 communication, the European Commission proposed the establishment of ‘Regional Protection Programmes’ (RPPs) as a scheme to cooperate with a third country on issues related to enhancing the protection capacity in the region, resettlement, and improvement of local infrastructure, integration of the asylum seekers to the host country, legal migration, migration management and returns.³⁹ The RPPs are integrated into the broader migration cooperation with these countries under of the ENP. The Progress Reports underline both legal developments and problems in the partner countries. The eastern neighbourhood of the EU is identified as a priority region for the establishment of the RPPs. In its follow-up communication in 2005, the Commission proposed to develop the RPPs in Ukraine, Moldova and Belarus stating that there was a clear interest among the Member States regarding cooperation with the eastern neighbours on asylum.⁴⁰

³⁷ Ingrid Boccardi, *Europe and refugees: towards an EU asylum policy* (The Hague: Kluwer Law International, 2002), xvi.

³⁸ European Commission, “Communication on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin ‘Improving Access to Durable Solutions’,” COM (2004) 410 final, June 4, 2004, accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0410:FIN:EN:PDF>.

³⁹ European Commission, “Communication on Regional Protection Programmes,” COM (2005) 388, September 1, 2005, accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0388:FIN:EN:PDF>.

⁴⁰ In addition to the WNIS, a pilot programme also started in Tanzania.

The thesis analyses the EU decision-making with respect to the integration of the RPPs into the ENP cooperation with the WNIS.

1.2. Research Design

As stated previously, the overarching research question is *‘What are the primary determining factors shaping EU decision-making in its policy towards eastern neighbours in the field of immigration?’*.

As the external dimension of immigration policy fits into the category of ‘high politics’⁴¹ issues that are subject to limited institutional constraints at the EU level, the decision-making is traditionally dominated by the Member States’ policy preferences. The Member States traditionally try to control the impact of the institutional constraints in this policy area and support mechanisms that they could exert national control in the course of decision-making process. In view of increasing communitarisation in the area of migration policy, the thesis aims to find out the ways in which the EU’s institutional framework influence and shape the policy outcome with respect to the external dimension of migration.

To answer the research question identified above, two sets of predominant factors are identified below: (i) the member states’ policy positions and (ii) the EU’s institutional framework. These two factors are explained below:

1. Member States’ Policy Positions

The thesis first looks at the Member States’ policy preferences. The thesis aims at sketching out the main policy cleavages among the Member States with respect to their policy positions concerning migration cooperation with the eastern neighbours. It could be assumed at the outset of the thesis that the Member States’ policy positions are the

⁴¹ Hoffmann introduced the term ‘high politics’ to identify the policy areas that nation states by and large prefer to preserve control. He has first used this concept in: Stanley Hoffmann, “Obstinate or Obsolete? The Fate of the Nation-state and the Case of Western Europe,” *Daedalus* 95, no. 3, *Tradition and Change* (Summer, 1966): 874.

primary determinants of the EU level policy outcome in a ‘high politics’ policy domain as migration. According to the intergovernmentalist approaches to EU decision-making, the EU Member States traditionally have kept their dominance due to the sensitivity of the policy area and have been subject to limited institutional constraints.

With the aim of analysing the impact of the Member States on the EU level policy outcome, this study closely looks at the Member States that have been active and shown interest in shaping the EU decision-making process. The thesis focuses on five Member States: France, Germany, Poland, Sweden and the United Kingdom. They are identified as the main actors that have actively taken part in the decision-making process concerning the eastern neighbours and have resources to shape and influence the EU policy. These Member States have been quite influential regarding the development of the broad EU policy towards its ‘near abroad’ as well. The initiative of the British Foreign Secretary Jack Straw during the Spanish Presidency in 2001 accelerated the EU level debate on the priorities of the EU vis-a-vis Ukraine, Moldova and Belarus.⁴² France, Germany and Sweden were highly active in the course of discussions regarding the formation of the ENP framework. In a response to Straw’s letter, Swedish Foreign Minister Anne Lindh and trade minister Leif Pagrotsky wrote a letter advocating a policy for the broader cooperation with the neighbourhood including Russia and the Middle East.⁴³ Both France and Germany shared the concerns reflected by Sweden with respect to the geographical scope of the policy. Due to their economic power in the region and their resources, an agreement among these countries was essential to agree to an EU level community policy towards the EU’s neighbourhood.

Although Poland was not a Member State when the debates initially started regarding the reformulation of EU policy towards Ukraine, Moldova and Belarus, it has over the years become highly active due to its intensive relations with the three eastern neighbours.⁴⁴ Poland’s special engagement with the region particularly related to the

⁴² Michelle Comelli, “The challenges of the European Neighbourhood Policy,” *The International Spectator* 39, no.3 (2004): 99.

⁴³ Ibid.

⁴⁴ A non-paper with proposals concerning an EU policy towards the new Eastern neighbours after EU enlargement was presented by the Ministry of Foreign Affairs of the Republic of Poland in December 2002.

shared history and the geographical proximity has increased the involvement of Poland as an important regional actor in the decision-making process. Poland also represents the common interests of the other new Member States (Visegrad Group⁴⁵ and Baltic States in particular) that are interested in the EU policy towards eastern neighbours. There is a high degree of convergence with respect to the preferences of the new Member States concerning migration cooperation with the eastern neighbours.

Furthermore, these five Member States represent the main cleavages with respect to diverging policy preferences within the EU. Although a more detailed analysis is presented in Chapter 4, two broad cleavages could be given to support this argument. First, the main cleavage regarding the degree to which security or mobility oriented policies are supported is represented. France, Germany and the United Kingdom have adopted security-oriented approaches emphasising their shared concerns related to future migratory pressures from the region as potential destinations for the new comers. These priorities are shared by most of the EU Member States which have been subject to high levels of migration. On the other hand, the Member States that stress mobility dimension, such as Poland and the rest of the new Member States that entered the EU in 2004 and 2007, have historically been either source or transit countries of immigration. Similar to Poland and the new Member States, Sweden has been in favour of further liberalisation of mobility for the citizens of the eastern neighbours. Second, these Member States' policy positions diverge concerning the long term engagement with the EU's eastern neighbours. Despite the reluctance of Germany and France with respect to giving the immediate eastern neighbours an accession prospect, Sweden and Poland have been in favour of the accession of Ukraine to the EU in particular. Although the UK has manifested its concerns with respect to potential migratory pressures from the region, it sees the prospect of enlargement as an effective foreign policy tool for the EU to realise its objectives in the region.

⁴⁵ In 1991, the Czech Republic, Hungary, Poland and Slovakia formed the Visegrad Group to cooperate with respect to EU integration. See <http://www.visegradgroup.eu/>.

2. The EU's Institutional Framework

Although the policy positions of the Member States are quite central to the EU decision-making process, the role of the EU institutions is considered important drawing on the institutionalist approaches to EU decision-making. This section will outline how the thesis examines the role of the EU's institutional framework. In this thesis, the phrase 'institutional framework' refers to (i) the legal framework of decision-making and (ii) the influence of the main decision-making institutions of the EU. Below, these two sets of measures are explained.

(i) The Legal Framework of EU Decision-making: The legal framework refers to the constitutional legal basis of the external dimension of EU migration policy and the decision-making procedures. In 1993, the Maastricht Treaty created an intergovernmental legal basis for the justice and home affairs policy area. With the ratification of the Amsterdam Treaty regarding 'visa, asylum, immigration and other policies relate to free movement of persons' in 1999, an EU level basis was created.⁴⁶ The increasing communitarisation concerning the decision-making procedures is considered an important factor that limits the influence of the Member States.

(ii) The Institutional Dynamics (the Council of the European Union, the European Commission, the European Parliament, the European Council): In line with the increasing use of co-decision procedure and the transfer of executive competences to the European Commission, the resources and capacities of the EU institutions with respect to the domain of migration have increased. The institutional dimension analyses the degree to which the EU Institutions could effectively exercise their legal competences in the area of the external dimension of migration. Although the Council of the EU is considered as 'the intergovernmental institution' of the EU, the Council structure incorporates several mechanisms that limit intergovernmental bargaining among the Member States. On the other hand, the increasing power of the European Council with the Lisbon Treaty could strengthen intergovernmental decision-making processes.

⁴⁶ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and related acts, Official Journal C 340/173, November 10, 1997, accessed January 2, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/CE:EN:HTML>.

It is worth underlining that the study is ‘a thematic’ policy area within the framework of the ENP and the Eastern Partnership. This is so as to further shed light on decision-making in a specific policy area (i.e. the external dimension of migration) based on the findings from the four sub-policy areas of cooperation.⁴⁷

1.3. Chapter Structure

Chapter 2 has three parts. It presents a review of the literature on the ENP and EU’s migration policy, the theoretical framework and the operationalisation of the research. The Chapter first presents a review of the scholarly literature on the ENP and the external dimension of the EU’s immigration policy. Drawing from the theoretical debate on EU decision-making, the second section addresses the assumptions of the intergovernmentalist and institutionalist approaches to the EU. The final part deals with the operationalization of the hypotheses and the methodology.

Chapter 3 is formed of two sections. The first section assesses the development of EU policy towards Eastern Europe since the end of the Cold War and the launch of the European Neighbourhood Policy in 2004. The second section deals with the evolution of the EU cooperation in the area of immigration and the overlap between the EU’s external relations and migration policies. The following chapters are organized based on two primary determinants that are identified as being the Member States’ policy positions and the EU’s institutional framework.

Chapter 4 investigates the intergovernmental dimension of the EU decision-making and the official policy positions of the EU Member States concerning the EU cooperation in this area. It does this by looking at five main actors (France, Germany, Poland, the United Kingdom and Sweden). Chapter 4 also maps out the dominant national preferences in the policy area. It presents a preliminary model regarding the main cleavages which have emerged among the Member States concerning migration cooperation in the eastern neighbourhood and the coalitions that are formed around these cleavages.

⁴⁷ The analytical framework identifies the theoretical approaches in Chapter 2.

Moving on to the EU level decision-making, Chapter 5 outlines the role of the EU's institutional framework concerning the external dimension of the EU's immigration policy to analyse its impact on the policy outcome. It first maps out the evolution of the legal framework. Secondly, it presents the institutional structure of the main decision-making bodies (i.e. the Council of the EU, the European Commission, the European Parliament and the European Council) in relation to the external dimension of migration.

Chapter 6 focuses on the decision-making process examining the main EU policy documents and the policy tools that are developed in the policy area. Focusing on the four case studies identified above, it traces the process with respect to the development of these policy tools.

Building on the analysis of these policy documents and tools, Chapter 7 concludes the thesis by testing the hypotheses that are identified in Chapter 2 to examine the degree to which they are instrumental in order to understand the EU decision-making process and discusses the broad contributions of the thesis to the existing EU literature.

CHAPTER 2: The Literature Review, Theoretical Framework and Methodology

This Chapter provides a framework for the rest of the thesis by initially reviewing the extant literature with the aim of locating gaps in the knowledge regarding the EU decision-making processes in the area of external dimension of migration. The literature review identifies a number of holes in relation to the existing literature, principally a lack of analysis of the decision-making processes as it relates to the external dimension of migration cooperation with third countries and a comparative approach to this matter. Despite the increased emphasis that has been put on the external dimension of migration policies in the literature, this analysis points at the need for detailed further research with respect to the decision-making processes in the area of the external dimension of the EU's migration policies. In addition, it is demonstrated that the existing literature fails to fully evaluate the increasingly holistic approach adopted by the EU in its cooperation with its neighbours in the area of migration -an area which has also been integrated within the ENP and the Eastern Partnership. Subsequently, the Chapter establishes the theoretical framework that permeates this thesis. In doing so, it compares the intergovernmentalist and institutionalist approaches to EU decision-making processes with the aim of assessing their explanatory capacity in this policy area. Critically examining the state-centric theoretical approaches to the EU decision-making in the area of the external dimension of migration, the theoretical framework introduces two specific hypotheses. Lastly, the Chapter introduces the core methodologies that underpin the thesis. This final section outlines the main research methods and the modes of acquiring and examining data.

2.1. Setting the Scene: Literature Review on the ENP and the External Dimension of Migration

The EU's relations with the countries along its new and extended periphery have been an area of particular interest in the European studies literature. Given the challenging environment that enveloped Europe with the collapse of the long-established East-West boundaries, the majority of the research in this area focuses on the post-Cold war

period.⁴⁸ In the aftermath of the eastern enlargement, the increasing diversity and concerns with respect to the EU's new immediate neighbourhood paved the way for a separate 'intermediary' category which is the 'near abroad'.⁴⁹ Although the literature on the EU's relations with its neighbours revolved around the EU enlargement and its ramifications until the accession of the central European countries, the discourse moved away to include alternative levels of integration.

As the overarching policy tool that was introduced following the eastern enlargement of the EU, a considerable amount of research focused on the ENP. Most of the academic and policy studies mainly concentrated on the benefits and/or the shortcomings of the ENP as a policy instrument. Wallace⁵⁰ and Smith⁵¹ questioned whether the policy could manage to develop a solid relationship between the EU and its neighbourhood based on bilateral agreements. Kelley⁵², Hillion and Cremona⁵³ in their work asked whether using pre-accession tools could be beneficial for interaction with the neighbours. Del Sarto and Schumacher⁵⁴ argued that the ENP was shaped as a response to the consequences of the EU's eastern enlargement process as opposed to a comprehensive consideration of the changing needs and necessities in the neighbourhood. Focusing on the implementation of the ENP, Whitman and Wolff's edited book presented a comprehensive assessment of the ENP in the eastern and

⁴⁸ Michael E. Smith, "The European Union and a Changing Europe: Establishing the Boundaries of Order," *Journal of Common Market Studies* 43, no. 1 (1996): 5–28; Lykke Friis and Anna Murphy, "The European Union and Central and Eastern Europe: Governance and Boundaries," *Journal of Common Market Studies* 37, no. 2 (1999): 211–232; Sandra Lavenex, "EU External Governance in 'wider Europe'," *Journal of European Public Policy* 11, (2004): 680–700.

⁴⁹ Thomas Christiansen, Ben Tonra and Fabio Petito, "Fuzzy Politics Around Fuzzy Borders: The European Union's 'Near Abroad'," *Cooperation and Conflict* 35, no.4 (2000): 389–416.

⁵⁰ William Wallace, "Looking After the Neighbourhood: Responsibilities for the EU-25," *Notre Europe Policy Paper* 4 (2003).

⁵¹ Karen E. Smith, "The Outsiders: the European neighbourhood policy," *International Affairs* 81, no.4, (2005): 757–773.

⁵² Judith Kelley, "New Wine in old skins: policy adaptation in the European neighbourhood policy," *Journal of Common Market Studies* 44 (2006): 29–55.

⁵³ Marise Cremona and Christophe Hillion, "L'Union fait a force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy," in *European Neighbourhood Policy: the Case of Ukraine*, eds N. Copsey and A. Mayhew (Brighton: Sussex European Institute, 2007).

⁵⁴ Raffaella A. Del Sarto and Tobias Schumacher, "From EMP to ENP: what's at stake with the European neighbourhood policy towards the southern Mediterranean?," *European Foreign Affairs Review* 10, no.1 (2005): 17–38.

southern neighbourhood and its effectiveness.⁵⁵ A number of scholars, including Barbé, Costa, Herranz and Natorski, looked at the ENP from the perspective of the externalisation of the EU rules outside of its borders, focusing particularly on the eastern neighbourhood.⁵⁶ Although the early studies focused on the policy itself, there has been an increasing literature on specific regions (i.e. the southern and eastern neighbours) due to the growing regional differentiation within the ENP. While Mayhew and Hillion's work questioned the added value of the Eastern Partnership⁵⁷, a number of scholars looked at the bilateral dimension and focused on the bilateral relations with individual countries in the framework of the ENP and the Eastern Partnership.⁵⁸

Migration cooperation with the EU's neighbourhood has attracted a considerable amount of scholars as a contentious topic with significant security repercussions for the EU Member States. The literature on the eastern enlargement and new borders of the Union following their accession referred to migration as one of the issues that needs particular attention.⁵⁹ In discussing matters related to the EU's migration and border policy, Monar put emphasis on the challenges of the 2004 eastern enlargement with respect to the management of the EU's eastern external border in view of the Schengen

⁵⁵ Richard G. Whitman and Stefan Wolff, "Much Ado About Nothing? The European Neighbourhood Policy in Context, Implementation and Impact," in *The European Neighbourhood Policy in Perspective*, eds. Richard G. Whitman and Stefan Wolff (Basingstoke: Palgrave Macmillan, 2010): 3-26.

⁵⁶ Esther Barbé et al., "Drawing the Neighbours Closer ... to What? Explaining Emerging Patterns of Policy Convergence between the EU and its Neighbours," *Cooperation and Conflict* 44, no.4 (2009): 378-399.

⁵⁷ Christophe Hillion and Alan Mayhew, "The Eastern partnership-something new or window dressing?", SEI Working Paper 119 (Brighton: Sussex European Institute, 2009).

⁵⁸ Nathaniel Copesey and Alan Mayhew, eds. *European Neighbourhood Policy and Ukraine* (Brighton: Sussex European Institute, 2005); Giselle Bosse, "Challenges for EU governance through Neighbourhood Policy and Eastern Partnership: the values/security nexus in EU-Belarus relations," *Contemporary Politics* 15, no.2, (2009): 215-227; Nice Popescu, "Re-setting the Eastern Partnership in Moldova," *CEPS Policy Brief* 199, (2009).

⁵⁹ Heather Grabbe, "The Sharp Edges of Europe: Extending Schengen Eastwards," *International Affairs* 76, no.3 (2000): 519-536; Andrew Geddes, "International Migration and State Sovereignty in an Integrated Europe," *International Migration* 39, no. 6 (2001): 21-42; Sandra Lavenex, "Shifting Up and Out: The Foreign Policy of European Immigration Control," *West European Politics* 29, no.2 (2006): 329-350.

integration process.⁶⁰ Geddes's work pointed at the changing structure and dynamics of the EU's border relationships in the post-Cold War era.⁶¹

The studies on the external dimension of the EU migration policy predominantly concentrated on the 'externalisation' dimension. In parallel to the broader normative approach and the focus on the security-liberty nexus in the EU literature on migration, the externalisation literature for the most part dealt with the 'effect'⁶² of the increasing importance attached to migration in the EU's relations with third countries in the broader field of justice and home affairs. One of the early analyses on the external dimension offered by Boswell focused on the externalization tools and preventive measures that are employed by the EU.⁶³ Lavenex and Ucarer focused on the transfer of the EU's migration and asylum policies outside its borders.⁶⁴ In terms of geographical focus, the cooperation with the neighbours of the EU in the area of migration received particular attention. Lavenex pointed at the 'selective' extension of the EU's internal institutionalization in the area of justice and home affairs towards its new neighbours due to presupposed risks and also responsibilities after the enlargement.⁶⁵

Although the implementation dimension has received high attention, there is a gap in the literature with respect to a comprehensive decision-making analysis concerning the external dimension of migration. The existing literature mainly concentrates on the member states' policy positions that have been manifested through the European Council or the Council of the EU documents. A number of studies addressed the decision-making process in the broader field of justice and home affairs. Monar's work

⁶⁰ Joerg Monar, "Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion', One Europe or Several?," *SEI Working Paper* 07/00 (Brighton: Sussex European Institute, 2000); Joerg Monar "The justice and home affairs dimension of EU enlargement," *The International Spectator* 36 no.3 (2001): 37-46; Joerg Monar, "The area of freedom, security and justice after the 2004 enlargement," *The International Spectator* 38 no.1 (2003): 33-50.

⁶¹ Andrew Geddes, "Europe's Border Relationships and International Migration Relations," *Journal of Common Market Studies* 43, no.4 (2005): 787-806.

⁶² Sarah Wolff, Nicole Wichmann and Gregory Mounier, "The External Dimension of Justice and Home Affairs: A Different Security Agenda for the EU?," *Journal of European Integration* 31 no.1 (2009): 9-23.

⁶³ Christina Boswell, "The External Dimension of EU immigration and asylum' policy," *International Affairs* 79, no.3 (2003): 619-38.

⁶⁴ Sandra Lavenex and Emek Ucarer, "The External Dimension of Europeanization: The case of immigration policies," *Cooperation and Conflict* 39 no.4 (2004): 417-443.

⁶⁵ Sandra Lavenex, "EU external governance in 'wider Europe'," *Journal of European Public Policy* 11 no. 4 (2004): 680-700.

on ‘the international actor-ness’ of the EU focused particularly on the legal framework of the broader justice and home affairs field including the aspects that are related to migration in the aftermath of the Amsterdam Treaty. In terms of the dynamics of decision-making processes, Pawlak, in his contribution to a recent special issue on the external dimension of justice and home affairs area, pointed at its ‘cross-pillar nature’. He underlined the involvement of policy-actors from justice and home affairs and external relations fields in the course of decision-making process.⁶⁶ Particularly in the case of EU policy towards the eastern neighbourhood, the role of the external relations officials who have gained horizontal competence (across the policy areas that have been integrated within the ENP) have particularly increased in line with the ENP and the Eastern Partnership. In line with Pawlak’s view on the external dimension of the justice and home affairs policy area, the research on the external dimension of migration requires a detailed institutional analysis which looks into both the inter and intra-dynamics of the institutions. There have been a limited number of studies with respect to the role of individual actors. For example, Boswell offered an intra-institutional analysis with respect to the external dimension of migration, focusing on the European Commission Directorates demonstrating different policy preferences.⁶⁷ However, there is a lack in the literature with respect to a comprehensive analysis of the EU decision-making processes in this policy area.

There is also a gap in the literature with respect to comparative analyses of different forms of migration cooperation with third countries. Most of the works on the external dimension of migration focus on a specific policy area such as readmission or visa dimensions. For instance, Cassarino⁶⁸ looked at the readmission agreement negotiations with the EU’s neighbours. Another study, offered by Trauner and Kruse, focused on the visa facilitation agreements and readmission agreements with the EU’s

⁶⁶ Pawlak Patryk, “The External Dimension of the Area of Freedom, Security and Justice: Hijacker or Hostage of Cross-pillarization?,” *Journal of European Integration* 31 no.1 (2009): 25-44.

⁶⁷ Christina Boswell, “Evasion, Reinterpretation and Decoupling: European Commission Responses to the ‘External Dimension’ of Immigration and Asylum,” *West European Politics* 31, no.3 (2008): 491–512.

⁶⁸ Jean-Pierre Cassarino, “Informalising Readmission Agreements in the EU Neighbourhood,” *The International Spectator* 42, no.2 (2007): 179-196.

neighbourhood.⁶⁹ A detailed analysis of the Mobility Partnerships was offered by Sandra Lavenex and Rachel Stucky that assesses the evolving holistic approach of the EU with respect to their relations with third countries in the area of migration.⁷⁰ A comprehensive policy analysis was presented by Geddes who looked at different elements of the EU's cooperation with third countries underlying the legal, illegal and development cooperation dimensions that have been discussed at the EU level in the area of external dimension focusing on the EU-South East Europe and EU-Middle East and North Africa relations.⁷¹ Parallel to the increasing emphasis that the EU has put on adopting a holistic approach to migration⁷², further research with respect to a comparative analysis of different dimensions of cooperation is needed.

The review above indicates that significant scope exists for further research in relation to the decision-making processes that have been developed in the area of the external dimension of migration in the EU. There is particularly a gap in the literature with respect to the role and involvement of institutional actors in the course of EU decision-making processes and the dynamics in the EU institutions. This has become even more important bearing in mind that the regional policy frameworks such as the ENP and the Eastern Partnership have strengthened the involvement of different actors. In light of the evolution of EU cooperation in the area of external dimension of migration, the thesis fills this gap by looking both at the policy positions of the Member States and the institutional framework of the EU in the policy area.

⁶⁹ Florian Trauner and Imke Kruse, "EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood," *CEPS Working Document* 290 (2008), accessed January 2, 2012

<http://www.ceps.be/book/ec-visa-facilitation-and-readmission-agreements-implementing-new-eu-security-approach-neighbour>.

⁷⁰ Sandra Lavenex and Rachel Stucky, "Partnering for migration in EU external relations?" in *Multilayered Migration Governance: The promise of partnership*, eds. Rachel Kunz, Sandra Lavenex and Marion Panizzon (Oxon: Routledge, 2011): 116-42.

⁷¹ Andrew Geddes, *Migration as foreign policy?: the external dimension of EU action on migration and asylum*, (Stockholm: SIEPS, 2009) <http://www.sieps.se/en/publikationer/migration-as-foreign-policy-20092>.

⁷² European Commission, "Communication on the global approach to migration one year on: towards a comprehensive European migration policy," COM (2006) 735 final, November 30, accessed January 2, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0735:EN:HTML>.

In addition, scope for more research exists with respect to studies that integrate different areas of migration cooperation with third countries. Although the external dimension of the EU's migration policy has traditionally focused on irregular migration and asylum, the EU has been working on integrating different areas of migration in its cooperation with third countries (particularly with its neighbours) since the adoption of the Global Approach to Migration in 2005. The ENP and the Eastern Partnership frameworks have incorporated this holistic approach. Looking at four dimensions of migration cooperation that the EU has integrated into its partnerships with the eastern neighbours, the thesis enables a comparative analysis.

As mentioned in the previous Chapter, the thesis, in its attempt to fill the gap regarding the EU decision-making in the area of external dimension of migration, assesses the intergovernmentalist and institutionalist approaches to EU decision-making processes. In the following section, the theoretical framework introduces the main analytical approaches and specific hypotheses that are tested.

2.2. Theoretical Framework

The research analyses the EU level decision-making process concerning the external dimension of migration through two different sets of theories: (i) intergovernmentalist/state-centric approaches that underline the role of member states and (ii) institutionalist approaches that shift the focus of the EU decision-making debate from a purely intergovernmental examination to an analysis of institutional actors and dynamics within the EU.

This section presents the theoretical framework of the thesis in three parts. In the first part, an overview of how these conflicting approaches to EU decision-making relate to the external dimension of EU's immigration policy is articulated. The second part reviews the development and main assumptions of these two theoretical approaches. After an overview of intergovernmental and institutional approaches, the final part presents the specific hypotheses drawn from them in relation to the EU policy making in the field of migration towards EU's eastern neighbours.

2.2.1. Review of the intergovernmental and institutional approaches to EU decision-making

2.2.1.1. Intergovernmentalist theoretical approaches to the EU

In the 1960s, the state-centric theoretical approaches were advanced drawing upon the realist theory of international relations to explain European integration and policy-making. This development was triggered with Hoffmann's critique of the pluralistic perspective of the neo-functionalist school.⁷³ Intergovernmentalist approaches share the notion that member states' governments are the main actors at the EU level. Hoffmann underlines that the EU institutions and integration are not able to constrain member states concerning the issues that are politically salient.

In 1966, Hoffmann introduced the term 'high politics' to identify the policy domains that member states seek to sustain their national control in line with state-centric theoretical approaches to the EU.⁷⁴ According to Hoffmann, the preservation of national sovereignty is considered much more important in 'high politics' areas, such as foreign policy, compared to economics and social policies which are generally considered under the category of 'low politics'. Although this classification could give a broad guideline, it is not absolute as the 'momentary saliency' of an issue could blur the distinction between these two categories.⁷⁵ Hoffmann later propounded a rather more flexible classification to reflect potential changes in regards to the issues' salience. He argued that 'high politics' issues tend to bring about a 'zero-sum' or 'quid pro quo' situation among member states. On the other hand, 'low politics' could be identified as the issues that enhance the 'common good' at the EU level.⁷⁶ Drawing on from the intergovernmentalist approach to EU policy-making, Hoffmann argued that the high politics issues are to a large extent dominated by inter-state negotiations and subject to limited institutional constraints.

⁷³ Stanley Hoffmann, "Obstinate or Obsolete? The Fate of the Nation-state and the Case of Western Europe," *Daedalus* 95, no. 3, *Tradition and Change* (Summer, 1966): 874.

⁷⁴ Ibid.

⁷⁵ Stanley Hoffman, "Reflections on the Nation-state in Western Europe Today," *Journal of Common Market Studies* 21 no.1 (1982): 21-38.

⁷⁶ Ibid.

Building on traditional intergovernmentalism, Moravcsik put forward an alternative explanation, liberal intergovernmentalism, through combining an inter-state bargaining approach with the assumptions of liberal theory.⁷⁷ Liberal intergovernmentalism shares the ‘rational state behaviour’ assumption of traditional intergovernmentalism which claims that states predominantly make decisions based on the calculation of costs and benefits of an action.⁷⁸ Drawing from the realist paradigm of international relations, intergovernmentalism considers EU member states as rational actors interacting in a ‘zero-sum’ environment.⁷⁹ It highlights the need for ‘shared interest’ among EU member states that could bring about the prospect of integrated policy-making at EU level. Member states’ governments take part in common policies at EU level based on the calculation of their national interest.⁸⁰ Traditional intergovernmentalism has a monolithic notion of national interest. It is argued that states are unitary actors and hierarchically the governments of EU member states have an absolute control over policy decisions.⁸¹

Diverging from traditional intergovernmentalism, liberal intergovernmentalism applies two international relations elements one after the other in attempts to explain preference building at national level and inter-state bargaining at EU level.⁸² Although both traditional and liberal intergovernmentalism conduct an ‘intergovernmental analysis of interstate bargaining’, liberal intergovernmentalism challenges the realist ‘national interest’ view of traditional intergovernmentalism with a ‘neo-liberal’ preference building dimension at domestic level.⁸³ According to Moravcsik, the preferences of EU

⁷⁷ Andrew Moravcsik, “Preferences and Power in the European Community: A liberal-intergovernmentalist approach,” *Journal of Common Market Studies* 31, no.4 (1993): 473-524; Andrew Moravcsik, “Liberal intergovernmentalism and integration: a rejoinder,” *Journal of Common Market Studies* 33 (1995): 611-28.

⁷⁸ Ibid.

⁷⁹ Stanley Hoffman, “Reflections on the Nation-state in Western Europe Today,” *Journal of Common Market Studies* 21 no.1 (1982): 21-38.

⁸⁰ Ibid.

⁸¹ Simon Hix, “The Study of the European Community: The Challenge to Comparative Politics,” *West European Politics* 17, no.11 (1994): 1-30.

⁸² Moravcsik, “Preferences and Power in the European Community: A liberal-intergovernmentalist approach,” 473-524; Moravcsik, “Liberal intergovernmentalism and integration: a rejoinder,” 611-28.

⁸³ Moravcsik, “Preferences and Power in the European Community: A liberal-intergovernmentalist approach,” 473-524.

member states are determined as a result of ‘domestic political conflict’.⁸⁴ The main element in the formation of national preference is considered as ‘microeconomic interests’ that restrict the actions of state at the international level in line with the neo-liberal idea.

The intergovernmentalist school adopts a narrow definition of supranational decision-making. Intergovernmentalist theories assert that the EU integration process does not lessen the power of national governments. Acknowledging that European integration involves a ‘pooling of sovereignty’ among member states, it is argued that ‘negotiation and coalition-building take place within the context of agreements between governments’.⁸⁵ They underline that the durability of EU level negotiations depends on the interest calculations of member states rather than an uncontrollable spill-over affect. Hoffmann argued that the EU institutions do not have independence from member states. EU Institutions are subject to member state influence and in particular to the superseding power of the European Council.⁸⁶

Moravcsik underlined the relative bargaining power of the member states concerning policy-making at the EU level and argued that EU decision making exemplifies ‘inter-state bargaining’.⁸⁷ Like Keohane and Hoffman, Moravcsik also stressed that the perceived interests of member states make cooperation possible at the international level. According to Moravcsik, there is not a collective interest development at the EU level in line with the intergovernmental approach.⁸⁸ Equally, the competences and autonomy of the supranational institutions are marginal in liberal intergovernmentalism as well.⁸⁹ Similar to traditional intergovernmentalism, liberal intergovernmentalism also argues that states are ‘unitary actors’ at the EU level. Although Moravcsik’s liberal intergovernmentalism focuses on explaining EU treaty negotiations under the unanimity principle where member states are not bound by day-to-day policy-making procedures,

⁸⁴ Moravcsik, “Liberal intergovernmentalism and integration: a rejoinder,” 611-28.

⁸⁵ Robert O. Keohane and Stanley Hoffmann, “Institutional Change in Europe in the 1990s” in *The New European Community: Decision Making and Institutional Change* ed. Robert O. Keohane and Stanley Hoffmann (Boulder: Westview, 1991): 17.

⁸⁶ Hoffman, “Reflections on the Nation-state in Western Europe Today,” 21-38.

⁸⁷ Moravcsik, “Liberal intergovernmentalism and integration: a rejoinder,” 611-28.

⁸⁸ Ibid.

⁸⁹ Ibid.

he claimed that liberal intergovernmentalism could be explanatory for the EU's routine decision-making process as well.⁹⁰ Beyond the grand bargains of treaty negotiations, it was underlined that unanimity is central to decisions reached at European Council summits in which member states broadly direct general EU decision-making process. Studies on decision-making of the Council of Minister meetings also demonstrate that there is a tendency to seek consensus among member states irrespective of formal decision-making procedures. Unanimity among member states was particularly underlined concerning the policy domains in which member states still retain their formal veto.⁹¹

The intergovernmentalist approach emphasises the prevalence and use of bargaining among member states to protect their national interests. Both the application of traditional intergovernmental approaches and two-level liberal intergovernmentalism of Moravcsik to EU policy-making process face with criticism particularly due to their sole focus on the role of states as units/actors and inter-state bargaining. New institutionalist theoretical approaches challenge the focus on 'self-interested' individual behaviour approach underlining the impact of EU's institutional dynamics.

2.2.1.2. Questioning the intergovernmental dominance in external dimension of immigration

Migration by and large has been considered a 'high politics' issue in Western Europe as a result of its increased salience since the end of the Cold War in 1989.⁹² The political instabilities and economic problems in various eastern bloc countries paved the way for high levels of migration, mainly based on humanitarian grounds, to Western European countries by the early 1990s. For a number of European governments who had been trying to limit mass migration since the early 1970s, the increase in migratory movements, that put pressure on asylum systems in particular, further triggered the salience of the issue. Although the domestic level had been the exclusive domain for the

⁹⁰ Moravcsik, "Liberal intergovernmentalism and integration: a rejoinder," 613.

⁹¹ Andrew Moravcsik and Frank Schimmelfennig, "Liberal Intergovernmentalism," in *European Integration Theory* ed. Antje Wiener and Thomas Diez (Oxford: Oxford University Press, 2009): 67-87.

⁹² Gary P. Freeman, "Modes of Immigration Politics in Liberal Democratic States," *International Migration Review* 29, no. 4 (1995): 881-902.

EU member states to address migration related concerns, the considerable increase in east-west migratory pressures prompted European level action. There was an EU level agreement regarding the need to address the potentially destabilising effects of migration from the countries of the former eastern bloc in view of the highly weak post-war political and economic conditions in the region. In 1992, the EU member states agreed to adopt a set of principles on ‘governing external aspect of migration policy’ at the Edinburgh European Council outlining their shared concerns.⁹³ Addressing the issues at the EU level was particularly significant for some member states’ governments such as Germany and France that had been constrained at the domestic level by the parties in opposition or due to disagreements among the coalition partners to adopt restrictive migration policies.⁹⁴ According to state-centric approaches to EU decision-making, the Europeanization of the policy area further strengthened the role and control of ‘the executive’ over policy outcomes.⁹⁵

As underlined in the previous Chapter, the external dimension of the EU’s migration has evolved as a policy domain between the EU’s external policy and its migration management practices. Third countries have been increasingly obliged to take on further responsibilities regarding fighting against unwanted migration as a precondition for cooperation with the EU in other fields.⁹⁶ Being at the intersection of external relations and justice home affairs policy domains, the management of external dimension of EU migration policy was firmly tilted towards the intergovernmental circle of justice and home affairs officials in its initial years.⁹⁷ While the Member States made commitments towards the communitarisation of migration policy with the ratification of the Amsterdam Treaty in 1999, the justice and home affairs officials in the Member

⁹³ Council of the European Union, “Edinburgh European Council 11-12 December Presidency Conclusions- Annex 5: Declaration on Principles of Governing External Aspects of Migration Policy,” SN 456/92, December 12, 1992, accessed January 2, 2012 http://www.europarl.europa.eu/summits/edinburgh/default_en.htm.

⁹⁴ Virginie Guiraudon, “European Integration and Migration Policy: Vertical Policy Making as Venue Shopping,” *Journal of Common Market Studies* 38, no.2 (2000): 261.

⁹⁵ Thomas Risse-Kappen, “Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis meet the European Union,” *Journal of Common Market Studies* 34, no.1 (1996): 53-80.

⁹⁶ Council of the European Union, “Seville European Council 21 and 22 June 2002 – Presidency Conclusions,” 13463/02, October 24, 2002.

⁹⁷ Sandra Lavenex, “Shifting Up and Out: The Foreign Policy of European Immigration Control,” *West European Politics* 29, no.2 (2006): 329-350.

States in particular have tried to retain an intergovernmental control over the decision-making process.

Drawing on international relations, intergovernmentalist theoretical approaches to the EU predominantly put their state-centric models to the test with negotiations concerning further integration and treaty reform among EU member states. On the other hand, the analytical tools of intergovernmentalist theories are also adjusted to explain the routine decision-making mechanism of the EU. This is mostly relevant for ‘high politics’ areas that are central to national sovereignty.⁹⁸

Intergovernmentalism has been perceived in the literature as relevant to the EU decision-making in the area of external dimension of migration due to its salience for the member states. Due to the salience, the so-called supranational institutions, particularly the European Commission, are cautious to avoid a backlash by member states who would perceive the Commission to be usurping their role. Moreover, there has been a re-nationalisation at the EU level with the increasing emphasis put on cooperation among smaller groups of states outside of the EU framework.⁹⁹ Despite the communitarisation in the policy area since the Amsterdam Treaty, these trans-governmental networks that operate alongside the formal EU institutional frameworks have an inclination to dominate the formal institutional decision-making mechanisms.¹⁰⁰

Taking into account the complex institutional structures and decision-making mechanisms in the EU, it is challenging to explain EU decision-making from the perspective of macro-level international relations theories. The main criticism to the historical dominance of international relations theories in explaining EU decision-making came from comparative politics scholars.¹⁰¹ Questioning the state-centric focus

⁹⁸ Geoffrey Garrett and George Tsebelis, “An institutional critique of intergovernmentalism,” *International Organization* 50, no. 2 (1996): 269-99.

⁹⁹ Sandra Lavenex, “Justice and Home Affairs: Communitarization with Hesitation,” in *Policy making in the European Union* eds. Helen Wallace, Mark .A. Pollack and Alasdair .R. Young, 6th ed. (Oxford: Oxford University Press, 2010): 466.

¹⁰⁰ For example, the informal G6 meetings of the interior ministers of six EU Member States (Britain, France, Germany, Italy, Poland, Spain) or the General Directors’ of Immigration Services Conference (GDISC) framework.

¹⁰¹ Simon Hix, “The Study of the European Community: The Challenge to Comparative Politics,” *West European Politics* 17, no.11 (1994): 1-30; John Peterson, “Decision-making in the European Union:

of the intergovernmentalist approach, Hix argued that the ‘internal institutional dynamic’ that was created within the EU could influence state behaviour and preferences at the EU level. Drawing from comparative politics, the new institutional approaches to the EU, according to Hix, could be considered as an alternative to analyse the ‘decision-making environment’ within the EU.

According to Peterson, EU decision-making process could be evaluated at three levels. The first level is ‘history-making decisions’ that lead up to changing ‘the way the EU works as a system’.¹⁰² This could occur if the treaty changes are negotiated or major strategic (policy or budgetary) decisions are taken by the heads of states or governments. The second level is the ‘policy-setting’ level where broad choices regarding different policy options are made. These decisions are taken among the EU institutions (mainly dominated by the Council of Ministers). The last level is the policy-shaping or sectoral level where the decisions regarding the specific details of how policies are made. Peterson underlined the role of directorates-generals in the European Commission and preparatory technical working groups in the Council of Ministers. The role of ‘political control’ is less effective at this level. Peterson argued that although ‘macro-theories’ (such as neofunctionalism, neorealism, intergovernmentalism) are instrumental in explaining ‘history-making decisions’, they are not helpful in terms of portraying the levels below due to the impact of the institutional framework of the EU.¹⁰³ He affirms that “‘The EU's institutional architecture ‘loads’ the decision-making process in favour of certain outcomes when policies are set. The new institutionalism helps us to come to grips with the way in which policy outcomes reflect the preferences of EU institutions (not *only* member states); different systems for deriving national preferences; and (most importantly), the effects of institutional change or continuity.’”¹⁰⁴

towards a framework for analysis,” *Journal of European Public Policy* 2, no.1 (1995): 69-93; Thomas Risse-Kappen, “Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis meet the European Union,” *Journal of Common Market Studies* 34, no.1 (1996): 53-80.

¹⁰² Peterson, “Decision-making in the European Union: towards a framework for analysis,” 69-93.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

According to Cram, the role of the EU institutions is important ‘in explaining the way in which policy agendas are set, the shape in which proposals are presented for approval by national governments, the means by which policy intervention is justified, the types of policy instruments which are selected for policy implementation and the way in which support is mobilised for EU action’.¹⁰⁵ Acknowledging the traditional supremacy of member state in the course of EU decision-making processes, Cram argued that the impact of the so-called supranational institutions of the EU could go beyond the day-to-day decision-making and have an impact on ‘constitutional’ choices.¹⁰⁶

The following section presents an overview of the main assumptions of new institutionalism regarding EU policy-making process. The aim is to analyse the extent to which an institutionalist approach provides greater explanatory value to the case of the external dimension of the EU’s migration policy.

2.2.1.3. New Institutionalism

The new institutionalist perspective to politics was developed in the 1980s and 1990s building on traditional institutionalist theories.¹⁰⁷ The older institutionalist approaches underlined the importance of formal institutional structures to understand different political contexts. As the focus shifted away from institutions in the 1950s, the old institutionalist approach was challenged by individual level analyses, such as behaviouralism and rational choice, which refused the institutional restrictions on individual actors.¹⁰⁸ The new institutionalism has revived the old institutionalist approaches to political science through questioning the supremacy of purely self-interested individual behaviour.¹⁰⁹

The definition of institutions offered by North was cited by a number of scholars. He defined institutions as ‘the rules of the game in a society or, more formally, are humanly

¹⁰⁵ Laura Cram, *Policy-Making in the European Union: Conceptual Lenses and the Integration Process*, (London: Routledge, 1997): 167.

¹⁰⁶ Cram, *Policy-Making in the European Union*, 168.

¹⁰⁷ Ben Rosamond, *Theories of European Integration* (Basingstoke: Palgrave, 2000): 113.

¹⁰⁸ Guy Peters, *Institutional theory in political science: the new institutionalism*, 2nd ed (London: Continuum Ltd, 2005): 2.

¹⁰⁹ Peters, *Institutional theory in political science*, 27.

devised constraints that shape human interaction'.¹¹⁰ The new institutionalist approaches to politics stress the 'role' of political institutions. Institutions are considered 'political actors' with certain level of independence.¹¹¹ Although new institutionalism does not underestimate the influence of political circumstances and preferences of individuals in policy and decision making process, 'preferences' are not considered as stable according to the new institutionalist approach.

According to Bulmer, institutions stretch 'beyond the formal organs of government to include standard operating procedures, so called soft law, norms and conventions of behaviour'.¹¹² In line with its comprehensive definition of institutions, the new institutionalism defines institutions not only as strict and formed administrations. Instead, they are considered actors outside the formal structure of government that have associations and concerns in relation to policy-making.¹¹³ Opposing purely 'rationalist and functionalist' approaches, new institutionalism considers official administrative bodies interrelated with institutional 'norms' such as 'beliefs, paradigms, codes, cultures and knowledge'.¹¹⁴

Despite their broad agreement on the fact that institutions make a difference, there are three main divisions within the new institutionalist approach: (i) rational choice, (ii) historical and (iii) sociological variants of institutionalism. These three main variants diverge based on their focus and assumptions regarding the involvement and impact of the institutions on politics of the EU.

¹¹⁰ Douglass R. North, *Institutions, institutional change, and economic performance*, (Cambridge: Cambridge University Press, 1990): 3.

¹¹¹ James G. March and Johan P. Olsen, "The New Institutionalism: Organizational Factors in Political Life", *American Political Science Review* 78 (1984): 734-49.

¹¹² Simon J. Bulmer, "The Governance of the European Union: A New Institutional Approach," *Journal of Public Policy* 13, no. 4 (1993): 355.

¹¹³ Ibid.

¹¹⁴ Simon J. Bulmer, "New Institutionalism, The Single Market and EU Governance," ARENA Working Papers WP 97/25, (1997), accessed January 2, 2012 http://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/workingpapers1997/wp97_25.htm.

Rational Choice Institutionalism

As put by Armstrong and Bulmer, rational choice institutionalism is the ‘thin’ form of new institutionalism.¹¹⁵ Rational choice institutionalism concentrates on the short-term impact of institutional procedures in the course of policy-making process rather than looking at the long-term transformative power of political institutions.¹¹⁶ Building on neoclassical economics, North argued that rational actors aim at maximizing their gains operating in a certain institutional structure.¹¹⁷ The preferences of these self-interested actors are regarded as fixed and not subject to influence from institutional structures.

In the EU framework, the rational choice variant of institutionalism focuses on the behaviours of policy-makers who are assumed to act as strategic actors with exogenous preferences.¹¹⁸ It is argued that the main aim of strategic national actors is to increase the efficiency and bring down the cost of EU level decision-making. However, the behaviours of rational actors are constrained within the EU institutional structure, thereby forcing them to ‘recalculate’ their actions at the EU level.¹¹⁹ According to rational choice institutionalism, institutions are described as ‘formal legalistic entities and sets of decision rules that impose obligations upon self-interested political actors’.¹²⁰ Rational choice institutionalism attempts to explain the way in which national actors interact with each other within the EU’s institutional structure.¹²¹ In line with the rational choice approach, the EU member states are restricted by the decision-making procedures at EU level for the policy areas that unanimity rule does not apply. Rational choice institutionalism argues that member states are forced to change their strategies concerning the decisions that should be taken using the Community method.¹²²

¹¹⁵ Kenneth A. Armstrong and Simon J. Bulmer, *The Governance of the Single European Market*, Oxford: Manchester University Press, 1998): 53.

¹¹⁶ Mark D. Aspinwall and Gerald Schneider, “Same menu, separate tables: The institutionalist turn in political science and the study of European integration,” *European Journal of Political Research* 38, no.1 (2000): 1-36.

¹¹⁷ Ibid.

¹¹⁸ Rosamond, *Theories of European Integration*, 116.

¹¹⁹ Rosamond, *Theories of European Integration*, 115.

¹²⁰ Ibid.

¹²¹ Mark Pollack, “Theorizing the European Union: Realist, Intergovernmentalist and Institutional Approaches,” (2010), <http://ssrn.com/abstract=1622912>.

¹²² Rosamond, *Theories of European Integration*, 115.

Historical Institutionalism

As put by Pierson, historical institutionalism is ‘*historic* because it recognizes that political development must be understood as a process that unfolds over time’ and ‘*institutionalist* because it stresses that many of the contemporary implications of these temporal processes are embedded in institutions-whether these be formal rules, policy structures or norms’.¹²³ The historical institutionalism introduces the concept of ‘path dependence’.¹²⁴ Hall and Taylor stated historical institutionalism affirms that institutions, as enduring actors to a great extent, construct certain ‘paths’.¹²⁵ In other words, historical institutionalism stresses that decision-making is influenced by the practice and boundaries of former institutional structures.¹²⁶

Pierson identified how historical institutionalism contradicts the assumptions of the inter-governmental approach and neo-functionalism.¹²⁷ The main aspects of intergovernmental bargaining criticised by Pierson are: ‘centrality of sovereignty, instrumentality of institutions, and centrality of intergovernmental bargaining’.¹²⁸ Pierson underlined that historical institutionalism accepts the intergovernmentalist argument that member states are the predominant ‘institution builder’ actors and that the main aim of member states is to realize their own interest. However, member states are not considered to have the sole control of decision making processes. According to historical institutionalism, although member states aim to realize their interests and limit the power of supranational institutions, ‘institutional evolution’ is hard to restrain. As institutions are given power by member states to realize states’ aims and also to maintain efficient decision-making, the member states eventually empower the supranational institutions rather than limiting their role. According to historical institutionalism, it is asserted that the ‘EC organisations will seek to use grants of

¹²³ Paul Pierson, “The path to European Integration: a historical institutionalist analysis,” *Comparative Political Studies* 29 (1996): 126, emphasis added.

¹²⁴ Peter A. Hall and Rosemary C. R. Taylor, “Political Science and the Three New Institutionalism,” *Political Studies* 44 (1996): 941.

¹²⁵ Hall and Taylor, “Political Science and the Three New Institutionalism,” 936-957.

¹²⁶ Stephan George and Ian Bache, *Politics in the European Union*, (Oxford: Oxford Press, 2001): 22

¹²⁷ Pierson, “The path to European Integration: a historical institutionalist analysis,” 128.

¹²⁸ Pierson, “The path to European Integration: a historical institutionalist analysis,” 128-30.

authority for their own purposes, especially to increase their autonomy'.¹²⁹ Although neo-functionalism puts forward the expansion of the power of supranational institutions, Pierson argued that the arguments of neo-functionalism fail to explain why member states are not successful in reacting against supranational institutions.¹³⁰ Firstly, the governments of member states are mostly worried about immediate benefit rather than long term. Secondly, the unforeseen outcomes of decisions and also the changing preferences of member states are considered the ways in which institutions find loop holes to empower themselves. Another criticism of new institutionalism is that the intergovernmentalist approach fails to consider the changing preferences of member states.¹³¹

Sociological Institutionalism

Sociological institutionalism attempts to explain the long term impact of institutional frameworks on the policy-making process.¹³² The cognitive and psychological features of the institutions are underlined by sociological institutionalism.¹³³ As opposed to rational choice institutionalism that considers preferences of policy makers to be exogenous, sociological institutionalism argues that preferences of policy-makers are also influenced by the EU's decision-making process.¹³⁴ In relation to the assumptions related to policy-actors, this approach also draws from the 'logic of appropriateness' concept of March and Olsen.¹³⁵ As opposed to 'logic of consequences' which solely evaluates the relation between actors' actions and their exogenous preferences to explain actor behaviour, 'logic of appropriateness' argues that the relation between behaviour and 'identities, rules and institutions' should be taken into account to explain actors' actions.¹³⁶ Adopting a constructivist approach, sociological institutionalism argues that institutions do not only affect the actors' plan of actions and strategies at the

¹²⁹ Pierson, "The path to European Integration: a historical institutionalist analysis," 132.

¹³⁰ Ibid.

¹³¹ Pierson, "The path to European Integration: a historical institutionalist analysis," 157.

¹³² Aspinwall and Schneider, "Same menu, separate tables: The institutionalist turn in political science and the study of European integration," 1-36.

¹³³ Rosamond, *Theories of European Integration*, 119.

¹³⁴ Rosamond, *Theories of European Integration*, 113-23.

¹³⁵ James G. March and Johan P. Olsen, "The Institutional dynamics of international political orders," *International Organization* 52 no.4 (1998): 951.

¹³⁶ March and Olsen, "The Institutional dynamics of international political orders," 951.

EU level as proposed by rational choice institutionalism. Going beyond formal rules (such as the legal basis of decision-making procedures) that are taken into account by rational choice institutionalism, it is argued that institutions, as informal rules and norms, also influence the identity of actors.

As presented above, the three approaches drawn from new institutionalism vary concerning their assumptions on actors and the way they conceptualise the impact of the EU's institutional framework on decision-making process. Overlapping with the assumptions of liberal intergovernmentalism, rational choice institutionalism focuses on self-interested actors with exogenous/given preferences who undertake bargaining at the EU level. On the other hand, the other variants argue that preferences of member states could be altered/developed and that they are 'endogenous' to the political course of action.¹³⁷ As opposed to rational choice institutionalism that only looks at official institutional structure, historical and sociological institutionalist approaches also examine internal structure and decision-making process within institutions.¹³⁸

The differences among different variants of new institutionalism could call into question the extent to which new institutionalism is a 'unified body of thought'.¹³⁹ Although each institutionalism has a different focus concerning the relations between actors and institutions, they are connected with a common analytical ground.¹⁴⁰ Despite their differences, Hall and Taylor argue that an interchange, rather than strict differentiation, among these variants could enhance the explanatory power of new institutionalism as each variant focuses on a partial dimension.¹⁴¹ In the EU context, all three main variants of new institutionalism challenge the sole focus of intergovernmentalism on member states despite their different views concerning the characteristics and extent of institutional influence. Instead of differentiating the three variants of new institutionalism, the research integrates these three approaches to assess the impact of the EU's institutional dynamics on EU decision-making. In the following section, the research presents the hypotheses that are drawn from the broad assumptions of

¹³⁷ March and Olsen, "The New Institutionalism: Organizational Factors in Political Life," 734-49.

¹³⁸ Bulmer, *New Institutionalism, The Single Market and EU Governance*.

¹³⁹ Hall and Taylor, "Political Science and the Three New Institutionalism," 936.

¹⁴⁰ Hall and Taylor, "Political Science and the Three New Institutionalism," 950.

¹⁴¹ Ibid.

intergovernmental and institutional approaches regarding the EU decision-making process.

2.2.2. The Hypotheses

In explaining EU decision-making, the intergovernmentalist and new institutionalist approaches differ in how they identify (i) main policy actors, (ii) the mode of policy-making process and (iii) policy outcomes (See Table 1). According to intergovernmentalism, member states are the sole policy actors. Although institutionalists agree that member states are central to EU decision-making process, they consider the ‘autonomous’ roles of EU institutions as well. These two approaches also diverge concerning decision-making process at the EU level. The intergovernmental approaches argue that decisions are reached based on an ‘inter-state bargaining’ among member states at the EU level. On the other hand, new institutionalist theories consider the intervening role of EU institutions. Regarding the policy outcome level, the intergovernmental approach argues that EU policy outcomes reflect the policy preferences of powerful member states. Institutionalists challenge this argument stating that policy outcomes are subject to the EU's institutional structure.

Table 1. Comparison of intergovernmental and institutionalist approaches

	Intergovernmentalist approaches	New Institutional approaches
Policy-actors	member states	member states; institutions
Decision-making process	inter-state bargaining without institutional constraints	member states are central; but institutions act as intervening variables
Policy-outcome	dominated by policy preferences of powerful member states	policy outcomes are subject to institutional influences

This thesis is mainly concerned with explaining the EU decision-making process. The intergovernmental and institutional approaches differ based on the mode of decision-making process in the EU. The intergovernmental approaches argue that EU decision-making is a result of an inter-state bargaining process. Drawing from state-centric approaches to EU decision-making, Moravcsik argued that the exogenous preferences of member states define ‘a bargaining space’ for the member states in which they could reach certain policy outcomes.¹⁴² He underlined that member states have certain preferences among possible policy outcomes as the advantages and disadvantages of potential policy outcomes differ among member states.¹⁴³ The member states that are relatively more concerned about an issue take the role of ‘policy entrepreneur’. These policy entrepreneurs put forward proposals regarding policy directions, deals and concessions taking into account the preferences of powerful and concerned member states.¹⁴⁴

The ‘inter-state bargaining’ approach is challenged by the theoretical approaches that consider institutions as policy actors that have intervening roles in the course of decision-making processes. The policy preferences of member states are traditionally central to EU policy concerning the external relations of the EU and the area of immigration and asylum. However, alternative explanations could be drawn from institutional approaches regarding the comparative impact of member states and the intervening role of EU’s institutional structure pertaining to the decision-making process.

Based on the intergovernmental and the institutional approaches outlined above, two main hypotheses were derived with respect to the way in which EU’s institutional structure affects decision-making process. The hypotheses focus on the relative impact and involvement of the member states and the EU’s institutional structure on decision-making processes.

¹⁴² Andrew Moravcsik, *The Choice for Europe: Social purpose and state power from Messina to Maastricht*, (London: University College London Press, 1999): 51.

¹⁴³ Ibid.

¹⁴⁴ Moravcsik, *The Choice for Europe*, 66.

Intergovernmentalist approach

H1 The EU decision-making process in the area of external dimension of migration is a result of inter-state bargaining among the Member States with aggregated exogenous policy preferences.

Drawing from the assumptions of intergovernmental approaches to EU decision-making, H1 argues that EU decision-making processes could be characterized as ‘bargaining’ and the member states are the sole important actors. This hypothesis is also in line with the broader EU literature on EU decision-making concerning the external dimension of migration policy that argues that the preferences and concerns of the major EU member states (such as Germany, the UK and France) have been the main determinant factors of the EU policy outcomes regarding this area.

Institutionalist approach

H2 The EU's institutional framework acts as an intervening factor with respect to EU decision-making process in the area of external dimension of immigration by constraining inter-state bargaining at the EU level.

The second hypothesis is drawn from new institutionalist approaches that consider the EU's institutional structure as an intervening factor. This hypothesis does not over rule the importance of member states’ policy preferences. Instead, it offers a complementary dimension through looking at the intervening impact of the EU’s institutional structure with the aim of enhancing the explanation of the intergovernmental approaches.

Table 2. Intergovernmentalist and New Institutional Hypotheses

Intergovernmentalism	New Institutionalism
↓	↓
inter-state bargaining	institutional decision-making
↓	↓
<i>H1 The EU decision-making process in the area of external dimension of migration is a result of inter-state bargaining among the MS with aggregated exogenous policy preferences.</i>	<i>H2 The EU's institutional framework acts as an intervening factor with respect to EU decision-making process in the area of external dimension of migration by constraining inter-state bargaining at the EU level.</i>

This analysis integrates different approaches within the new institutionalist theory with the aim of maximising the findings regarding the intervening role of the institutional structure in the course of decision-making processes and the way it constrains the impact of member states. The hypotheses that are presented above are tested based on an analysis of the impact of the EU's institutional framework in the course of EU decision-making processes. To analyse the impact of the EU's institutional framework, the thesis focuses on two dimensions:

1. The legal framework of EU decision-making regarding the external dimension of migration

With the aim of answering the research question, the thesis, first, examines the degree to which the legal basis of EU action and decision-making procedures reinforce or restrict the impact of member states or institutional framework in the area of external dimension of immigration. A constitutional legal basis is essential for the EU to act and adopt measures in a policy area. In the area of migration policy, the EU legal basis has

evolved since the ratification of the Maastricht Treaty. However, due to the intergovernmental legal basis under the Maastricht Treaty, the European Commission and the European Parliament did not have strong competences. The communitarisation process started with the Amsterdam Treaty which has triggered a gradual transfer of competences to the EU institutions. However, the legal basis of the EU was predominantly developed with respect to the internal issues in the area of migration. The external dimension has been a rather novel phenomenon.

This first dimension of analysis is mainly in line with the assumptions of the rational choice institutionalism. As the rational choice institutionalism considers decision makers as rational actors who aim at maximising their interest, it is argued that the actions of policy makers are constrained due to the abolition of unanimity principle. As opposed to the ‘bargaining approach’ of intergovernmentalism, the extension of the Community method to areas such as immigration and asylum policies restricts the impact of member states according to institutionalist approaches. On the other hand, the legal and constitutional rights of the member states are taken into account. Member states could limit each other or EU institutions based on the legal framework. Parallel to this, decision-making procedures could enhance the role of EU institutions. The institutions could also constrain the behaviour of each other or national actors at different stages of EU decision-making process.

The competences of the EU Institutions and the Member States differ with respect to the four case studies analysed in the thesis. By adopting a comparative approach, the thesis aims to present the expansion of the legal basis and the decision-making procedures in the EU in the area of external dimension of migration.

2. The Institutional Dynamics

Although the legal basis and the decision-making procedures are highly important for the EU or the Member States to act, it is also important to analyse the degree to which these different actors exercise their competences that are given under the EU’s legal framework. As a second dimension, the impact of the formal institutions of the EU on

decision making is analysed. The intergovernmentalist and institutionalist approaches differ substantially regarding the impact of the institutions on decision-making process. Although the ‘inter-state bargaining’ approach of intergovernmentalism assigns a limited role to the supranational EU institutions and underlines the role of the European Council (or the role of transgovernmental networks in this policy area), historical institutionalism in particular emphasizes the ultimate empowerment of the supranational institutions due to increasing resources and capacities in the course of EU integration.

The research analyses the degree to which the EU Institutions have been able to exercise their competences. Although it is hard to disentangle different aspects of institutional influence, the thesis aims to analyse the extent to which the Member states and the EU Institutions have been able to effectively exercise their competences under the presented legal framework and the decision-making procedures. It particularly looks at the dynamics among the member states in the course of negotiations in the light of different decision-making procedures (i.e. unanimity and qualified majority voting), the independence of the European Commission’s agenda on an issue area from the policy preferences of the strong Member States while drafting its proposals, the role of the European Commission and the European Parliament in the course of policy negotiations. Looking at both the legal basis/decision-making procedures and the institutional involvement, the thesis aims to present a thorough analysis of the impact of the EU's institutional structure.

With respect to empirical observations, the research evaluated the impact of the member states’ preferences and the institutional structure with respect to the external dimension of immigration policy focusing on four case studies: 1) irregular migration, 2) visa cooperation, 3) labour migration and 4) asylum cooperation. As the research is theory-oriented, the empirical observations based on the case studies are compared with the opposing theoretical explanations (drawn from state-centric and non-state-centric theories) and not with each other. Nevertheless, the analysis of four case studies is useful given that the legal basis of decision-making, the competences of the EU member states and the institutions as well as the informal practices of decision-making differ

across these four areas of immigration. As such, this enables to observe the variation on the outcome.

2.3. Methodology

Given that the thesis is based on a case study analysis seeking in-depth answers to the research question identified in the previous Chapter, the use of qualitative research methodology is particularly relevant. Using traditional non-quantitative methods of data collection that are identified in this section, the research question is analysed based on four case study areas adopting a comparative approach and through the use of the process-tracing method.

2.3.1. Case study analysis and the process-tracing method

The thesis looks at the relevance and relative strength of the state-centric and institutional theories through drawing hypotheses based on these two theoretical approaches regarding the role and interaction of different actors in EU decision-making. The research does not attempt to draw ‘universal’ conclusions that could be horizontally relevant for the EU decision-making process based on the findings drawn from the four case studies of the research. Instead, the research examines the applicability of the theoretical concepts. Through examining the relation between state-centric and institutionalist theories and the case studies, the research aims at testing two competing theoretical frameworks in terms of their ability to explicate the EU decision-making concerning the eastern neighbours with respect to immigration issues. The testing of two hypotheses drawn from these theories across four different dimensions of immigration cooperation enables a demonstration of variance with respect to competences of the EU institutions, member states and practices of decision-making.¹⁴⁵ The competences of the EU Member States and the EU institutions and the practices in these areas differ in the four case studies of the thesis (i.e. irregular migration, visa cooperation, labour migration and asylum cooperation).

¹⁴⁵ For case study analysis, see Stephen Ven Evera, *Guide to methods for students of political science*, (Ithaca: Cornell University Press: 1997); Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences*, (Cambridge: MIT Press, 2005).

The research employs the process-tracing method¹⁴⁶ due to its interest in mapping the process of decision making in the EU with respect to the eastern neighbours focusing on the case studies related to the immigration dimension of cooperation. Bearing in mind the complex structure of the EU decision-making process, process-tracing is considered as a useful method to analyse ‘intervening causal processes’. As such, the process tracing method allows us to conduct a detailed analysis of how the EU’s institutional structure affects policy outcome. With its complex structure, the EU decision-making process encompasses closely affiliated causal relations which are developed and extended in time. The research aims at exploring the linkages between different elements of the EU decision-making process in the context of the external dimension of migration. This is relevant for both the analysis of the legal basis and decision making procedures as well as the influence of the EU institutions in the course of decision-making process. The four case studies that are chosen from the same policy area (immigration) are helpful in terms of comprehending the linkage and interaction between different actors (such as states and institutions) that are identified by the two competing theories that are compared. The analysis of the case studies also takes into account the ‘context factors’ that are specific to this relatively new (but fast developing) EU level cooperation in the area of migration policy. The case studies are used to understand the ‘interaction effects’ and the ‘causal mechanisms’ between different actors/components in this particular policy area.

2.3.2. Data Collection

The research collects data from three main sources: document analysis, elite interviewing and through secondary sources. Document analysis and interviews with the EU and member state officials who were involved in the decision-making process provided the data essential for conducting process tracing so as to identify the main causal linkages.¹⁴⁷

¹⁴⁶ For the use of process-tracing method, see George and Bennett, 2005.

¹⁴⁷ For process-tracing method and elite interviewing, see Oisín Tansey, “Process Tracing and Elite Interviewing: A Case for Non-probability Sampling,” *Political Science and Politics* 40 (2007): 765-772.

2.3.2.1. Document Analysis

As indicated above, primary data retrieved from official sources are highly important for tracing the process bearing in mind that the research is interested in the decision-making process. With the aim of gathering data from primary resources, empirical research starts with the analysis of official documents pertaining to EU policy towards the Eastern neighbours that have been published by the EU Institutions and Member States. Primary data (retrieved from documents published including policy documents, reports and declarations) with respect to national and EU level decision-making as well as with respect to Eastern neighbours allows the research to conduct an in-depth analysis. Bearing in mind the varying level of involvement and commitment among the member states pertaining to the eastern neighbourhood, the project focuses on analysing the policy efforts of the most influential member states in this regard (France, Germany, Poland, Sweden and the United Kingdom as noted above). Documentary data is obtained through official documents and reports that have been released based on bilateral and multilateral agreements or associations of these member states in relation to the new Eastern neighbours of the Union. These documents include agreements, meeting conclusions, proceedings, institutional reports, governmental or ministerial declarations regarding the position of these individual member states with respect to relations of the EU with new Eastern neighbours. Regarding the EU institutions, data gathering is carried out through tracing the process with respect to the evolution of decision-making process with respect to the development of EU level policy in the four case study areas of the thesis.

2.3.2.2. Elite Interviews

Interviews with policy officers and administrators both within the EU and member state institutions constitute the main data gathering part of the project. The consideration regarding conducting interviews with policy officer level actors is to ensure that interviewees have factual knowledge regarding the decision-making processes. Semi-structured interviews with officials that are actively involved in the decision-making process are considered as ‘critical sources of information’ to analyse this decision-

making process.¹⁴⁸ The elite actors that are interviewed in Brussels, Berlin and London include member state officials based at the EU Permanent Representations and at the national ministries/agencies, EU officials based at the European Commission, the European Parliament and the Council of the European Union. Due to the cross-cutting nature of the external dimension of EU's migration policy, the interviewees are selected both from the units in these institutions that are responsible with the regional dimension and also thematic dimension. This is particularly important due to the dynamic nature of the policy area with the introduction of the ENP and the Eastern Partnership. These policies have increased the role of the regional officials by giving them horizontal mandates with respect to the EU's cooperation with these countries. Although the migration field is known for being under the strong dominance of justice and home affairs officials, the thesis aimed to look at the involvement of actors who have regional and thematic focus. The interviews are conducted both with the officials who have regional competence regarding the region and the officials with sectoral focus on the immigration dimension.

Instead of structured interview questions, empirically informed questions that are drawn from the chosen analytical framework (detailed earlier in this chapter) are asked to the interviewees with the aim of unfolding the informal processes of EU decision-making processes. As the research is interested both in the formal and informal dimensions of EU's institutional framework, the interviews provide the insight and data on the internal mechanisms shaping the EU policy towards the region and specifically regarding immigration. To cross check the information provided and verify findings, a number of interviews with researches in think tanks and research institutions are also conducted.

2.3.2.3. Secondary Sources

The research uses both academic literature and documents produced by relevant organisations. Starting from the early stages of the research, academic literature on EU policy making, external relations and cooperation on the migration issues are consulted. Academic sources also fed into the following chapters and complemented the primary

¹⁴⁸ Tansey, "Process Tracing and Elite Interviewing: A Case for Non-probability Sampling," 765-772.

data gathered through document analysis and elite interviews. In addition, both qualitative and quantitative data retrieved from other sources, such as Eurostat (the statistical office of the EU), the European Migration Network (that provides comparative data regarding immigration and asylum systems in the EU member states) and Frontex (the EU agency specialised in border management and security cooperation) on the immigration sphere complement the data provided by the EU and member states and help draw conclusions regarding the migratory pressure on the EU borders and on specific member states.

CHAPTER 3: The evolution of EU's neighbourhood policy and its migration dimension

This chapter deals with the development of the European Neighbourhood Policy (ENP) and the Eastern Partnership (EaP) as horizontal policy frameworks that incorporate cooperation in several policy areas. It aims to show the increased importance of the relations between the EU and the three eastern European republics (i.e. Ukraine, Moldova and Belarus) since the early 2000s in view of the (then) upcoming EU's eastern enlargement. The chapter also aims to point at the growing emphasis put on the relations between the EU and third countries regarding migration cooperation.

The first section of the Chapter explains the development of the ENP as the overarching policy and the main framework governing the EU's relations with its immediate and close neighbourhood. After providing an overview of the relations between the EU and the WNIS region in the aftermath of the Cold War under the Common Foreign and Security Policy (CFSP), the section discusses the development of the ENP and its tools. The section mainly points out the diverging and converging preferences among the Member States with respect to the geographical priorities of the EU in the wider neighbourhood. It demonstrates how the eastern European countries have become a priority region for the EU which has paved the way for the development of a specific policy for the east (i.e. the Eastern Partnership).

The second section of the Chapter focuses on the evolution of the external dimension of the EU's migration policy since the ratification of the Amsterdam Treaty in 1999. It presents the increasing importance of the cooperation with third countries in the area of migration for the Member States and their specific concentration on the cooperation with the immediate neighbourhood of the EU.

3.1. Overview of the EU policy towards eastern neighbours

3.1.1. Background of the relations with the region after the Cold War

In the aftermath of the Cold War, the bilateral relations with Ukraine, Belarus and Moldova were not a priority for the EU Member States. As opposed to the relations with the central European states, there was not an EU level shared commitment to bringing the WNIS closer to the (then) European Community.¹⁴⁹ In 1994, the EU concluded the Partnership and Cooperation Agreements (PCAs) with the Russian Federation, Ukraine and Moldova.¹⁵⁰ In comparison to the Association (European) Agreements that were negotiated with the central European states starting in the early 1990s¹⁵¹, the PCAs were relatively weak forms of cooperation.¹⁵² Although they lacked strong policy instruments and commitments (in relation to integration to the EU), the PCAs aimed to set the ground for further cooperation between the EU and these countries based on political proximity and increasing economic relations. In 1995, a PCA was negotiated with Belarus but the agreement remains frozen due to the country's political state and human rights concerns.¹⁵³

In 1999, the EU showed increased interest in the region adopting two 'common strategies' on Russia and Ukraine in the framework of the CFSP. Introduced by the Amsterdam Treaty, common strategies are policy tools for the European Council to 'set out their objectives, duration and the means to be made available by the Union and the Member States' in the matters that they have shared interests.¹⁵⁴ However, these second pillar policy instruments were largely considered as ineffective.¹⁵⁵ Nonetheless, they

¹⁴⁹ Stefan Gänzle, "EU Russia Relations and the Repercussions on the 'In-between'," in *Europe's Last Frontier Belarus, Moldova and Ukraine Between Russia and the European Union* eds. Oliver Schmidtke and Serhy Yekelchuk (London: Palgrave: 2008): 196.

¹⁵⁰ The PCAs entered into force in December 1997, March 1998, and July 1998 respectively.

¹⁵¹ For a comprehensive analysis of the Association Agreements between the EU and the accession countries from central Europe, See: Alan Mayhew, *Recreating Europe: The European Union's policy towards Central and Eastern Europe* (Cambridge: Cambridge University Press, 1998).

¹⁵² Roman Petrov, "The Partnership and Co-operation Agreements with the Newly Independent States," in *Handbook on European Enlargement*, eds. Andrea Ott and Kirstyn Inglis (The Hague: TMC Asser Pressi, 2002): 178.

¹⁵³ European Commission, "What the EU could bring to Belarus? Non paper," November 2006, accessed January 2, 2012 http://eeas.europa.eu/delegations/belarus/documents/eu_belarus/non_paper_1106.pdf.

¹⁵⁴ Treaty on European Union EU (Consolidated version 1997), OJ C 340, November 10, 1997

Treaty on European Union (Consolidated version 1997) accessed January 7, 2012

<http://eur-lex.europa.eu/en/treaties/dat/11997M/htm/11997M.html#0145010077>.

¹⁵⁵ Piet Eeckhout, *External Relations of the European Union: Legal and Institutional Foundations* (2004): 406; Stefan Gänzle, "EU Russia Relations and the Repercussions on the 'In-Betweens,'" 201.

demonstrated an increased interest. Following the adoption of the first Common Strategy on Russia in June 2009¹⁵⁶, the European Council adopted the second one on Ukraine in December 1999. Germany in particular supported the adoption of these policy instruments to enhance the EU policy towards the region.¹⁵⁷ The European Council also agreed on common strategies with respect to the Mediterranean neighbours of the EU in 2000.¹⁵⁸

3.1.2. The development of the EU's neighbourhood policy: Intergovernmental dialogues

Due to the approaching eastern enlargement of the EU in the early 2000s, the Member States became more concerned about the EU's relations with their future immediate neighbours. This was due mainly to the concerns related to the political and economic instabilities in the region. Moreover, the EU Member States that would like to give more emphasis on the relations of the EU with eastern Europe were aware of the fact that the upcoming accession of the central European countries to the EU would also support further engagement with the eastern neighbours. Poland already reflected its support to further EU enlargement to the east at the opening of the EU accession negotiations in 1998.¹⁵⁹

The EU level dialogue concerning the WNIS region was spurred by the British foreign secretary Jack Straw's letter to the Spanish foreign minister, Josep Piqué, during the Spanish presidency in the first half of 2002.¹⁶⁰ In his letter, Straw pointed out the potential security risks to the EU originating from the then future eastern neighbours that were both economically and politically in poor condition. The letter emphasized the need for improved security measures between the EU and new imminent eastern

¹⁵⁶ European Council, "Common Strategies of the European Union of 4 June 1999 on Russia," OJ L 157, June 24, 1999, accessed January 2, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999E0414:EN:HTML>.

¹⁵⁷ Stefan Gänzle, "EU Russia Relations and the Repercussions on the 'In-Betweens'," 201.

¹⁵⁸ European Council, "Common Strategies of the European Council of 19 June 2000 on the Mediterranean region," OJ L 183, July 22, 2000, accessed January 2, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000E0458:EN:HTML>.

¹⁵⁹ Piotr Buras and Karolina Pomorska, "Poland and the European Neighbourhood Policy," *Foreign Policy in Dialogue* 6, no.19 (2006): 35, accessed January 7, 2012
www.deutsche-aussenpolitik.de/newsletter/issue19.pdf.

¹⁶⁰ Michelle Comelli, "The Challenges of the European Neighbourhood Policy," *The International Spectator* 39, no.3 (2004): 99.

neighbourhood due to the security risks including irregular immigration and trafficking. This view was by and large shared in the EU. There were several preventive measures (such as the border management support to the accession countries or their delayed inclusion to the Schengen zone) introduced ahead of the enlargement to secure the upcoming eastern borders. Straw specifically underlined the need for developing closer cooperation with Ukraine, Moldova and Belarus. The letter proposed to recognise these three countries in the region as ‘special neighbours’ without tabling the prospect of future accession to the EU.¹⁶¹ As the so-called big bang enlargement was already considered a challenge for the EU integrity and in view of the enlargement talks with Turkey and the Western Balkans, there were strong reservations in the EU with respect to making further enlargement commitments.

In April 2002, the Council asked the European Commission and the High Representative for the CFSP to come up with suggestions regarding plans for the EU to improve its relations with its eastern neighbours after the 2004 enlargement.¹⁶² With the call from the General Affairs and External Relations Council, the Commissioner for External Relations, Chris Patten and the High Representative for the CFSP, Javier Solana presented a framework for an overarching neighbourhood policy in August 2002.¹⁶³ They wrote a joint letter identifying five priority measures for the EU: reinforced political dialogue, economic cooperation and closer trade links, cooperation on justice and home affairs including border management and migration, financial assistance and integration to the EU policies.¹⁶⁴

The relations with Ukraine, Moldova and Belarus were among the priorities of the succeeding Danish Presidency in the second half of 2002 as well. In December 2002, the European Council Presidency Conclusions underlined that there is a ‘need for the EU to formulate an ambitious, long-term and integrated approach towards each of these countries, with the objective of promoting democratic and economic reforms,

¹⁶¹ Letter of the British Foreign Secretary Jack Straw to the Spanish Presidency of the EU, 28th January 2002, cited in Comelli, “The Challenges of the European Neighbourhood Policy,” 99.

¹⁶² Council of the European Union, “2421st Council meeting – General Affairs - Luxembourg, 15 April 2002,” 7705/02 (Presse 91) (2002).

¹⁶³ Joint letter on Wider Europe by Commission Chris Patten and High Representative Solana 8 August 2002, accessed January 1, 2012 http://ec.europa.eu/world/enp/pdf/_0130163334_001_en.pdf.

¹⁶⁴ Ibid.

sustainable development and trade, thus helping to ensure greater stability and prosperity at and beyond the new borders of the Union.’¹⁶⁵ In the interview conducted for this thesis, the former German Ambassador to the EU underlined that ‘It is not a CFSP Policy. It is a common policy. When the first discussions came up, we asked the question what we should do and it was never a CFSP question.’¹⁶⁶ Different from the former policy frameworks that were built under the CFSP, the ENP strategy paper opened up the possibility for partner country participation in the community programmes.¹⁶⁷ With the ENP, the responsibilities of the Commission with respect to the preparation of the Action Plans and the running of the project have increased. In December 2002, the President of the Commission, Romano Prodi, stressed the importance of integrating neighbours to the EU in his speech ‘A Wider Europe - A Proximity Policy as the key to stability’. Prodi proposed the main framework of the model for the Union to operate with respect to its neighbourhood that includes inclusion to the EU common market as well as further cooperation on the fronts of illegal migration, crime, security threats, environmental issues and regional conflicts. He confirmed that the model was taken from the enlargement practice without an explicit ‘accession’ prospect for the future neighbours.¹⁶⁸

The European Security Strategy published in December 2003 emphasized the importance of ‘better co-ordination between external action and Justice and Home Affairs policies’ in the EU to tackle with organized crime including irregular

¹⁶⁵ Council of the European Union, “Copenhagen European Council 12 and 13 December Presidency Conclusions,” 15917/02, January 29, 2003, accessed January 1, 2011, <http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002&bid=76&lang=en&id=>.

¹⁶⁶ Interview with Wilhelm Schoenfelder, Former German Permanent Representative to the EU, May 2010, Brussels.

¹⁶⁷ European Commission, “European Neighbourhood Policy Strategy Paper”, COM (2004) 373 final, 2004, accessed January 2, 2012 http://ec.europa.eu/world/enp/documents_en.htm; European Commission, “The general approach to enable ENP partner countries to participate in Community agencies and Community programmes,” COM (2006) 724 final, accessed January 2, 2012 http://ec.europa.eu/world/enp/pdf/com06_724_en.pdf.

¹⁶⁸ Romano Prodi, “A Wider Europe – A Proximity Policy as the key to stability” (Speech to the Sixth ECSA-World Conference. Jean Monnet Project. Brussels, 5-6 December 2002) SPEECH/02/619, accessed January 7, 2012 <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/02/619&format=HTML&aged=1&language=EN&guiLanguage=en>.

migration.¹⁶⁹ The intensification of cooperation with the neighbours aimed at integrating the neighbouring countries to the EU and transferring responsibility beyond the EU borders.¹⁷⁰

3.1.3. Diverging regional priorities of the Member States: Eastern Europe vs. the Mediterranean

The initial proposals in relation to the EU's new neighbourhood initiative focused on the east. However, the scope of the policy gradually began to expand towards the broader neighbourhood of the EU.¹⁷¹ The Member States that were geographically closer to the eastern borders of the Union, in particular Germany, Austria and the northern Member States were in favour of furthering the relations with the upcoming eastern neighbours due to their proximity and closer relations with Eastern Europe.¹⁷² The EU was also subject to demands from the (then) candidate countries (in particular, Poland) concerning enhancing the relations with the new neighbours of the Union.¹⁷³ On the other hand, the southern Member States reflected their concerns regarding the proposals for developing a specific policy for the eastern neighbours of the EU. They argued that a policy focusing exclusively on the east would have a negative effect on the EU's relations with the southern neighbours. France, Spain, Italy, Greece and Portugal shared the concern that the existing eastern focus of the Union (which had been there due to the eastern enlargement process) would be further accelerated.¹⁷⁴ France in particular reflected its objections in relation to the shift of financial assistance towards the eastern neighbours and pressured the European Commission to not decrease the share of the southern neighbours concerning the financial support proportion between south and eastern neighbours.¹⁷⁵ In addition to the southern Member States, the

¹⁶⁹ European Council, "A Secure Europe in a Better World: European Security Strategy," accessed January 7, 2012 <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

¹⁷⁰ Sandra Lavenex, "EU external governance in 'wider Europe'," *Journal of European Public Policy* 11, no.4 (2004): 680-700.

¹⁷¹ Council of the European Union, "2450th Council session-External Relations," 12134/02 (Presse 279) September 30, 2002 accessed January 7, 2012 http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/72321.pdf.

¹⁷² Maurizio Carbone, "Between ambition and ambivalence: Italy and the European Union's Mediterranean policy," *Modern Italy* 13, no.2 (2008): 162.

¹⁷³ Iris Kempe, 'The German Impact on the ENP' in *The New Neighbourhood Policy of the Union, Foreign Policy in Dialogue*, 2006 (19): 26.

¹⁷⁴ Carbone, "Between ambition and ambivalence: Italy and the European Union," 162.

¹⁷⁵ Maxime Lefebvre, 'France and the European Neighbourhood Policy' in *The New Neighbourhood Policy of the Union, Foreign Policy in Dialogue* 19 (2005): 22.

Swedish Foreign Minister Anna Lindh and the Trade Minister Leif Pagrotsky wrote a letter conveying and advocating a policy for the broader cooperation with the neighbourhood including Russia and the Mediterranean countries including Middle East.¹⁷⁶

In March 2003, the Commission presented the ‘Wider Europe- Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours’ document. Referring to the neighbourhood, the document denoted both the eastern and southern neighbours. In the east, the document referred to Russia and the WNIS (Ukraine, Moldova and Belarus). The southern neighbours referenced in the document were Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria, and Tunisia. The framework did not include the countries that already have membership prospects such as the Western Balkan countries and Turkey.¹⁷⁷ Although the proposal did not endorse accession, it entailed further details regarding the partnership and increased integration between the EU and its neighbourhood through gradually opening up the EU’s internal markets to these countries, as well as promoting the free movement of goods, services, capital and persons.

The European Commission’s Wider Europe-Neighbourhood document was accepted by the General Affairs and External Relations Council in June 2003.¹⁷⁸ The Council conclusions underlined that the relations with the neighbouring countries were based upon the ‘differentiation’ principle. Bilateral Action Plans (with specific targets for each country and individualized time-lines for the realization of these targets) were identified as the main policy instruments to be used to improve cooperation with individual neighbours. It was agreed that Action Plans were going to be based on cooperation that was already in place between the EU and an individual country. These Action Plans were ‘political agreements’ rather than legal documents agreed upon by the Union and a partner country.

¹⁷⁶ Comelli, “The challenges of the European Neighbourhood Policy,” 99.

¹⁷⁷ European Commission, “Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours,” 11 March 2003, COM (2003) 104 final, accessed January 7, 2012 http://ec.europa.eu/world/enp/pdf/com03_104_en.pdf.

¹⁷⁸ Council of the European Union, “General Affairs and External Relations Council Conclusions, Luxembourg, 10369/03 (Presse 166), June 16, 2003, accessed January 7, 2012, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/76201.pdf.

In relation to the geographical scope of the policy, the Council also pointed at the possibility of including the ‘Southern Caucasian’ neighbours into the process.¹⁷⁹ The decision with respect to the inclusion of the Southern Caucasian countries (Georgia, Armenia and Azerbaijan) into the ENP was taken in June 2004.¹⁸⁰ Despite the interest from the EU side, Russia wanted to keep its relations with the EU at the bilateral level as a ‘strategic partner’ rather than being included into the ENP arguing that the policy did not signal an equal relationship between the EU and the neighbouring countries.¹⁸¹ In 2003, a political agreement between the EU and Russia was reached to cooperate in four policy areas (including economy, justice and home affairs, external security and research and education) within the framework of ‘common spaces’ agreement.¹⁸²

3.1.4. From ‘all in one basket’ to ‘differentiated’ regional approach

Putting both the eastern and southern neighbours in one basket, the ENP did not have a strong regional focus. As explained above, the underlying reason was the fact that a consensus among the Member States was needed for an EU wide commitment to the policy. The regional differentiation gradually occurred after the adoption of specific policies for the southern and the eastern neighbourhood. The southern dimension of the ENP – the Union for the Mediterranean- is built on the former Barcelona Process cooperation with the initiative of the French Presidency in 2008. For the eastern neighbourhood, a new policy – the Eastern Partnership - is launched in May 2009 based on a Polish-Swedish proposal.

The EU cooperation with its Southern neighbours was initiated with the launch of the Euro-Mediterranean Partnership in 1995.¹⁸³ The Partnership aimed to promote

¹⁷⁹ Council of the European Union, “Conclusions on Wider Europe – New Neighbourhood Document,” June 16, 2003, accessed January 7, 2012 http://ec.europa.eu/world/enp/pdf/cc06_03.pdf.

¹⁸⁰ European Commission, “European Neighbourhood Policy Strategy Paper”, COM (2004) 373 final, 2004, accessed January 2, 2012 http://ec.europa.eu/world/enp/documents_en.htm.

¹⁸¹ Alan Mayhew and Nathaniel Copsey, ‘Introduction’ in *Ukraine and European Neighbourhood Policy*, eds. Alan Mayhew and Nathaniel Copsey, (Brighton: Sussex European Institute, 2005).

¹⁸² European Commission, “Relations with Russia,” COM (2004) 106, February 10, 2004, accessed January 7, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0106:FIN:EN:PDF>.

¹⁸³ See: The Euro-Mediterranean Partnership http://ec.europa.eu/external_relations/euromed/index_en.htm.

cooperation between the EU member states and twelve Mediterranean neighbours of the Union (Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey) in several areas including security, economy and socio-cultural exchanges.¹⁸⁴ It offered bilateral and regional cooperation between the EU and its Southern neighbours to foster peace, stability and cooperation with and among the southern neighbours. With the introduction of the ENP, it was agreed to enhance bilateral assistance to the neighbouring states through Action Plans.¹⁸⁵ It was agreed that Action Plans would be based on existing Association Agreements with the Mediterranean neighbours (excluding the case of Libya and Syria). This country-based approach from the ENP aimed to promote and reward reform processes from individual neighbours to advance relations and integration with the EU as opposed to regional approach of the Euro-Mediterranean Partnership.¹⁸⁶ On the other hand, the regional approach that was promoted by the Euro-Mediterranean Partnership is still considered significant to increase the cooperation and dialogue among the Southern neighbours of the EU. The recent initiative from France launched during the French Presidency in June 2008, 'the Union for the Mediterranean', aims to further boost the relations with the region as well.¹⁸⁷

With regards to the relations with the eastern neighbours, the ENP proposal did not receive high support from the Member States that have been in favour of further enlargement towards Eastern Europe. Although the eastern European neighbours would be eligible to apply for full accession to the EU under Article 49 of the Treaty on European Union, the ENP does not have a clause or clearly state that the partner countries will necessarily achieve membership status or be considered for accession. The lack of this commitment is viewed as a matter of concern by the EU Member states such as Poland that are strong proponents for the future membership of eastern neighbouring countries, in particular Ukraine. Although Poland favoured a policy

¹⁸⁴ Barcelona Declaration and the Euro-Mediterranean Partnership

http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/r15001_en.htm.

¹⁸⁵ Ibid.

¹⁸⁶ Elisabeth Johansson-Nogues, "A 'ring of friends'?: The implications of the European Neighbourhood Policy for the Mediterranean," *Mediterranean Politics* 9, no. 2(2004) : 240-247.

¹⁸⁷ Council of the European Union, Joint Declaration of the Paris Summit for the Mediterranean, 13 July 2008," 11887/08 (Presse 213), July 15, 2008, accessed January 7, 2012, <http://register.consilium.europa.eu/pdf/en/08/st11/st11887.en08.pdf>.

particularly for the eastern neighbourhood, the ENP put the eastern neighbours in the same category with the southern neighbours. However, the distinction between ‘European neighbours’ and ‘Neighbours of Europe’ should be made according to Poland.¹⁸⁸ The difference between ‘European Neighbours’ referring to the Eastern European neighbours and ‘Neighbours of Europe’ referring to the southern neighbours of the EU was underlined by the Foreign Minister of Poland Sikorski in line with the Eastern Partnership proposal in May 2008 as well. Sikorski stressed that the European Neighbours will have the ‘right’ to apply for EU membership.¹⁸⁹

3.1.4.1. A specific policy towards East: The Eastern Partnership

The Eastern Partnership was put forward as a joint Polish-Swedish initiative pointing at the necessity to have deeper integration with the Eastern neighbours of the Union.¹⁹⁰ This Partnership was offered to six eastern partners including Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.¹⁹¹ The Eastern Partnership aims at furthering both economic and political relations with the Eastern neighbours through enhancing free trade cooperation, increased mobility, and cooperation in energy security as well as offering economic and social support to Eastern neighbours. The Eastern Partnership was presented as an initiative to be rooted in the ENP structure administered by the European Commission.¹⁹²

3.1.4.1.1. The Success of Poland’s eastern policy?

The EU’s relations with the eastern neighbourhood have been an important item in Polish foreign policy pursued by sub-sequent Polish governments. There has been agreement among different political parties with respect to the need for an active eastern policy. In 1998, the Polish Foreign Minister Geremek proposed at the opening of Poland’s negotiations on membership to develop an eastern policy at the EU level with

¹⁸⁸ Renata Goldirova, “‘Eastern Partnership’ could lead to enlargement’ Poland says,” *EUobserver*, May 27, 2008, Brussels, accessed January 7, 2012 <http://euobserver.com/9/26211>.

¹⁸⁹ Ibid.

¹⁹⁰ “Polish-Swedish Proposal: Eastern Partnership,” Ministry of Foreign Affairs of the Republic of Poland, June 2008, accessed January 7, 2012

<http://www.msz.gov.pl/Polish-Swedish,Proposal,19911.html>.

¹⁹¹ Among these six partner countries, Belarus only takes part only in the multilateral dimension of the Eastern Partnership.

¹⁹² Christophe Hillion and Alan Mayhew, “The Eastern partnership-something new or window dressing?,” *SEI Working Paper* 119 (Brighton: Sussex European Institute: 2009).

countries remaining outside of the enlarged EU.¹⁹³ Following an unpublished non-paper on EU's eastern policy by the Polish Foreign Ministry in 2001, the first concrete Polish policy with respect to eastern neighbourhood is the non-paper presented at the Copenhagen Summit in December 2002.¹⁹⁴ The non-paper highlighted the Polish perspective concerning cooperation with the eastern neighbours focusing primarily on the advancement of the relations with Ukraine, Belarus and Moldova as well as Russia. The proposal that was based on three pillars (Community, Governmental/Bilateral and Non-Governmental) was distributed to the EU Member States, candidate countries and eastern European countries. In February 2003, the succeeding Polish Foreign Minister Cimoszewicz further stressed Poland's will and knowledge concerning shaping the EU's eastern policy and the importance of the eastern dimension for the EU highlighting the enhancement of relations with Ukraine, Belarus and Moldova and Russia.¹⁹⁵ Poland's contribution to decision-making with its expertise in the region was considered an asset.

The non-paper was developed parallel to EU level discussions concerning EU's new neighbourhood policy initiative towards Ukraine, Moldova and Belarus spurred by the inputs from the UK and Sweden during the Spanish and Danish Presidencies in 2002.¹⁹⁶ Although Poland did not have formal decision making powers until its full accession to the EU, there was a considerable degree of overlap with the policy instruments proposed by Poland and discussed at the EU level concerning the new neighbourhood. The Polish

¹⁹³ Elsa Tulmets, "Is a Soft Method of Coordination Best Adapted to the Context of EU's Neighbourhood?" (paper presented at The European Neighbourhood Policy: A Framework for Modernization? Workshop, 1-2 December 2006, European University Institute, Florence): 6.

¹⁹⁴ Ministry of Foreign Affairs of the Republic of Poland, Non-paper with Polish proposals concerning policy towards the new Eastern neighbours after EU enlargement, December 2002

[http://www.msz.gov.pl/Non-](http://www.msz.gov.pl/Non-paper,with,Polish,proposals,concerning,policy,towards,the,new,Eastern,neighbours,after,EU,enlargement,2041.html)

[paper,with,Polish,proposals,concerning,policy,towards,the,new,Eastern,neighbours,after,EU,enlargement,2041.html](http://www.msz.gov.pl/Non-paper,with,Polish,proposals,concerning,policy,towards,the,new,Eastern,neighbours,after,EU,enlargement,2041.html).

¹⁹⁵ Address by Polish Minister of Foreign Affairs, Włodzimierz Cimoszewicz, "The Eastern Dimension of the European Union. The Polish View," at the Conference "The EU Enlargement and Neighbourhood Policy," Warsaw, 20th February, 2003

<http://www.msz.gov.pl/20,lutego,2003r,->

[The,Eastern,Dimension,of,the,European,Union.,The,Polish,View.,Speech,by,Wlodzimierz,Cimoszewicz,,Polish,Minister,of,Foreign,Affairs,,at,the,Conference,The,EU,Enlargement,and,Neighbourhood,Policy,,Warsaw,,20,February,2003,1305.html](http://www.msz.gov.pl/20,lutego,2003r,-).

¹⁹⁶ Royal Danish Ministry of Foreign Affairs, "Results of Danish EU Presidency, One Europe from Copenhagen to Copenhagen," (Copenhagen, 2002): 10.

position mainly differed from the other actors involved in this process with its argument regarding the ‘long term accession membership’ for the neighbours.

Parallel to the ENP’s geographical divisions initiated with the UfM proposal of France, Poland put more emphasis on the need for a specialized policy for the east and presented the Eastern Partnership proposal with the support and input from Sweden. In response to the UfM which calls for closer cooperation with the Southern neighbours of the Union, the Eastern Partnership aims at furthering both economic and political relations with the Eastern neighbours.

3.1.4.1.2. The involvement of Sweden

The partnership regarding the Eastern Partnership initiative between Sweden and Poland developed at the capital level in the lead of the Swedish and Polish foreign ministers, Sikorski and Bildt.¹⁹⁷ The partnership between Sweden and Poland with respect to the common concerns in the eastern neighbourhood dates back to the ‘Sweden-Poland: Baltic Sea neighbours in the new Europe initiative’ in 1999.¹⁹⁸ Sweden was one of the main supporters of the EU’s eastern enlargement including the accession of Poland not solely due to its broad support to the central European countries but also due to the common concerns in the shared neighbourhood.

The Eastern Partnership initiative mainly evolved based on the preceding discussions with respect to developing a specific policy for the eastern neighbours. It aimed to alter and reform the existing ENP framework which was not welcomed by the eastern neighbours with EU membership inspirations and their proponents within the EU. The cooperation on the issue of eastern neighbours between Sweden and Poland was successful due to several factors. As opposed to the scepticism in the EU towards the new member states’ interest in the eastern neighbourhood, Sweden’s support for a specific policy on the eastern dimension of the ENP as a member state that has a broader geographical involvement was perceived as a more credible standpoint with

¹⁹⁷ Interview with Former official from Polish MFA, 26 May 2010, Brussels.

¹⁹⁸ Government Offices of Sweden, “Statement of government policy in the parliamentary debate on foreign affairs, 10 February 1999 (Unofficial Translation),” accessed January 7, 2012 <http://www.regeringen.se/sb/d/10275/a/70230>.

respect to the region. Sweden's contribution to the Eastern Partnership proposal also underlined a common European approach rather than reflecting the interests of a certain group of member states which was essential to convince the member states that were lukewarm towards further emphasis on the eastern dimension. The Eastern Partnership was also considered as a way to signal the commitment of the EU in the eastern neighbourhood particularly for the neighbours that were sceptical towards the existing ENP framework.¹⁹⁹ Sweden's involvement in the Eastern Partnership initiative along with Poland as a member state that supports a 'European perspective' particularly for the WNIS helped to convince them to agree to a policy evolved within the broader framework of the ENP. In addition, the approaching Swedish Presidency in the second half of the 2009 was also considered as an asset to keep the issue on the EU agenda.

3.1.4.2. Reaching a consensus on the Eastern Partnership initiative

In June 2008, Poland and Sweden managed to convince the European Council that there was a need to have a specific eastern dimension within the ENP. Although there were concerns in relation to geographical separation within the ENP framework, the Union for Mediterranean initiative (UfM) of French President Sarkozy during the French Presidency justified a particular policy for the eastern neighbours. As put by an EU official, 'The EaP is almost a direct result of the UfM. If there were no UfM, there would not be definitely an EaP'.²⁰⁰ The European Council asked the Commission to prepare the policy proposal for Spring 2009.²⁰¹ The proposal development was accelerated due to the Georgian conflict during August 2008. The European Commission was then asked to bring forward the EaP proposal date to December 2008. The events in the Caucasus in Summer 2008 were quite significant for the EU's role at the international scene as well. In a way, it was realized that the frozen conflicts in the eastern neighbourhood of the EU required more involvement as well as commitment from the EU side.

¹⁹⁹ Ibid.

²⁰⁰ Interview with EU official A, March 2009, Brussels.

²⁰¹ Christophe Hillion and Alan Mayhew, "The Eastern partnership-something new or window dressing?," *SEI Working Paper* 119 (Brighton, Sussex European Institute, 2009).

In line with its policy towards the eastern neighbours, Poland built coalitions with other EU member states that shared its concerns with respect to the region. Intergovernmental consultation among the Member States was significant with respect to the Eastern Partnership initiative. Concerning the development of policy, the dialogue predominantly was between capitals through discussions at the ministerial level.²⁰² High level meetings also included contacts with the United Kingdom and Germany concerning the proposal development process. The support of Germany for the policy was particularly significant concerning the Eastern neighbourhood.²⁰³ The cooperation between the two countries along with France within the Weimar Triangle was also significant with respect to the relations with the neighbours in the framework of the ENP.²⁰⁴ The partnership with Germany was particularly underlined by the Foreign Minister Sikorski.²⁰⁵

The timing of the Eastern Partnership was particularly significant taking into consideration the upcoming Czech Republic EU Presidency in the first half of 2009. The need for an increased emphasis on the relations with the eastern neighbours was shared among the Visegrad countries. The visegrad countries agreed on several issues such as ‘the question of energy policy, environmental protection, neighbourhood policy and cooperation with Ukraine and Belarus’.²⁰⁶ The Czech Presidency supported and put forward the Eastern Partnership proposal being in favour of further EU involvement in Eastern neighbourhood. In addition, the Baltic States have put emphasis on the EU’s relations with its eastern neighbours. Particularly Lithuania has been a significant

²⁰² Interview with Member State official B, May 2009, Brussels.

²⁰³ Ministry of Foreign Affairs of the Republic of Poland, An Interview with Prime Minister of the Republic of Poland Donald Tusk, June 16, 2008, accessed January 7, 2012
http://www.msz.gov.pl/index.php?page=13181&lang_id=en&bulletin_id=16&document=2081#_Toc204493485.

²⁰⁴ Ministry of Foreign Affairs of the Republic of Poland, “Statement by Prime Minister of the Republic of Poland Jaroslaw Kaczynski on EU Council voting system,” June 18, 2007, accessed January 7, 2012
http://www.msz.gov.pl/index.php?page=10998&lang_id=en&bulletin_id=16&document=2081#_Toc173664359.

²⁰⁵ Ministry of Foreign Affairs of the Republic of Poland, “Address by Foreign Minister of the Republic of Poland Radosław Sikorski on the goals of the Poland’s foreign policy for 2009, February 13, 2009, accessed January 7, 2012
http://www.msz.gov.pl/index.php?page=14662&lang_id=en&bulletin_id=16&document=2081#_Toc225666148.

²⁰⁶ Ministry of Foreign Affairs of the Republic of Poland, “Statement by Prime Minister of the Republic of Poland Jaroslaw Kaczynski on EU Council voting system, June 18, 2007, accessed January 7, 2012
http://www.msz.gov.pl/index.php?page=10998&lang_id=en&bulletin_id=16&document=2081#_Toc173664359.

partner concerning the enhancement of the EU's relations with the region due to the shared concerns with respect to the neighbourhood and shared scepticism towards Russia.²⁰⁷

Signed between the EU and its eastern partner countries in May 2009 in the course of the Czech Republic's EU Presidency, the Eastern Partnership has constituted the 'specific eastern dimension of the European Neighbourhood Policy'.²⁰⁸ Although the Polish-Swedish initiative was successful concerning convincing the Member States to develop an EU level policy with respect to the eastern neighbours, the Eastern Partnership does not significantly alter the former ENP framework.²⁰⁹ The Member States were very cautious concerning not giving an accession perspective to its eastern neighbours. The red lines of the Member States concerning heated issues such as the accession prospect or granting additional financial aid for the eastern neighbours are reflected in the Eastern Partnership. The agreement does not point out the EU membership aspirations of the countries in the eastern neighbours.

3.1.5. The Legal Basis of the ENP

The ENP Action Plans that have been agreed upon by each neighbouring country are political documents and do not have legal basis. The Action Plans display the commitment and willingness of partner countries to comply with the EU's legal framework. The progress of neighbouring countries with regards to fulfilling their commitments has been 'closely monitored' by the EU.²¹⁰ The level of integration between the EU and its neighbours varies and is dependent on several factors including geographical and political differences and priorities. The legal basis of the relations between the EU and the neighbouring countries rests on Partnership and Cooperation Agreements or Association Agreements. The current legal basis of the bilateral relations

²⁰⁷ Ministry of Foreign Affairs of the Republic of Poland, "Address by President of the Republic of Poland Lech Kaczynski during his visit to Lithuania, September 5, 2006, accessed January 7, 2012 http://www.msz.gov.pl/index.php?page=9596&lang_id=en&bulletin_id=16&document=2081#_Toc148849479.

²⁰⁸ Council of the European Union, "Joint Declaration of the Prague Eastern Partnership Summit 7 May 2009," May 7, 2009, 8435/09 (Presse 78).

²⁰⁹ Christophe Hillion and Alan Mayhew, "The Eastern partnership-something new or window dressing?," *SEI Working Paper* 119 (Brighton, Sussex European Institute, 2009).

²¹⁰ European Commission, "European Neighbourhood Policy Strategy Paper", COM (2004) 373 final, 2004, accessed January 2, 2012 http://ec.europa.eu/world/enp/documents_en.htm.

with its Eastern neighbours dates back to the bilateral agreements in the aftermath of the Cold War. The Partnership and Cooperation agreements for Ukraine, Moldova, and the Russian Federation were signed in 1994. The agreement which was negotiated with Belarus remains frozen due to the political problems that hinder further cooperation.

Among the eastern neighbours of the EU, the negotiations with Ukraine started in 2007 to have an enhanced agreement which would offer a relatively more sufficient base for furthering relations with the Union to take the place of the PCA.²¹¹ In September 2008, the EU-Ukraine Summit declared that an association agreement replacing the PCA would further develop integration and mutual commitments with Ukraine.²¹² This agreement would be based on Article 217 TFEU.²¹³ Replacing the initial Action Plan, the EU Ukraine Association Agenda was adopted in November 2009 by the EU Ukraine Cooperation Council.²¹⁴ In December 2011, a consensus was reached between the EU and Ukraine regarding the Association Agreement.²¹⁵

With the ratification of the Lisbon Treaty in December 2009, the relations of the EU with its neighbours are included in the EU's legal framework. The Lisbon Treaty has introduced Article 8 TFEU which refers to the 'development of a special relationship with neighbouring countries'. This article could be considered a legal basis with respect to the ENP. Article 8(1) TFEU states that '[T]he Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly.'

²¹¹ Alan Mayhew, *'Ukraine and the European Union: financing accelerating integration'*, UKIE Warsaw, December 2008.

²¹² Council of the European Union, "Joint Declaration on the EU-Ukraine Association Agreement, EU-Ukraine Summit 9 September 2008," 12812/08 (Presse 247) September 9, 2008, accessed January 7, 2012 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressData/en/er/102633.pdf.

²¹³ Christophe Hillion, "The post-Lisbon EU system of external relations: Implications for EU-Ukraine relations," *Wider Europe Working Papers* 5 (2010): 4.

²¹⁴ "EU Ukraine association agenda to prepare and facilitate the implementation of the Association Agreement" document is available at: http://eeas.europa.eu/ukraine/docs/index_en.htm.

²¹⁵ Council of the EU, 'Ukraine-EU Summit Joint Statement', 18835/11 (PRESSE 513), 19 December 2011 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/127064.pdf

3.1.6. Instruments of the ENP

The instruments that are applied by the ENP resemble the EU's pre-accession instruments. As the case for the accession process, the ENP aims for reform via internalization of EU norms and *acquis* by the neighbouring countries as well. Although the partner countries are not given an accession prospect, they are expected to gradually incorporate the legal framework of the EU. As enlargement, the ENP comprises a wide range of matters aiming to facilitate cooperation between the EU and the neighbouring countries. The cooperation with the partner countries includes following areas of importance 'political dialogue and reform; trade and measures preparing partners for gradually obtaining a stake in the EU's internal market; justice and home affairs; energy, transport, information society, environment and research and innovation; and social policy and people-to-people contacts'.²¹⁶ The bilateral Action Plans for reforms have been prepared with each neighbouring country to evaluate the implementation of policies by the neighbours. Although the ENP stresses 'joint ownership' between the EU and a partner country, the EU predictably has a strong hand in determining the policy priorities for bilateral partnerships.

The ENP strategy paper also underlined the importance of sharing 'common values' concerning 'rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development' including commitment to 'fight against terrorism, proliferation of weapons of mass destruction as well as abidance by international law and efforts to achieve conflict resolution'.²¹⁷ The integration of the neighbouring countries to the EU would be based on the incorporation of EU legislation, carrying out essential political, economic and institutional reforms as well as a commitment to these common values.²¹⁸ The progress of the partner countries with respect to integrating the EU legislation and reforms would be evaluated by the European Commission. Successful integration of the EU legislation could enable the neighbours to be a part of the EU common market and to participate in 'the free

²¹⁶ European Commission, "European Neighbourhood Policy Strategy Paper", COM (2004) 373 final, 2004, accessed January 2, 2012 http://ec.europa.eu/world/enp/documents_en.htm.

²¹⁷ Ibid.

²¹⁸ Ibid.

movement of persons, goods, services and capital (four freedoms)’ without full accession to the Union.²¹⁹

The introduction of the ENP has also paved the way for the restructuring of the EU assistance being offered to its neighbours. Initially, the funding for reforms in the partnering countries was primarily through various assistance programmes targeting different geographical locations.²²⁰ In 2007, a single framework, i.e. the European Neighbourhood Policy Instrument (ENPI), was introduced to fund the reforms and policies in the partner countries in line with the individual partner country Action Plans. This new approach combined the originally disparate programmes under the ENPI. The former assistance programmes for countries in the EU’s neighbourhood, including the TACIS for the eastern partners (including Russia)²²¹ and the MEDA programme, targeting the Mediterranean neighbours, were merged into this new funding instrument.

Regarding the scope of the assistance available under the ENPI to fund ENP Action Plans with the neighbouring countries, 12 billion EUR in funds are allocated for the 2007-2013 budgetary period, which marks a considerable increase in funding compared to previous budgetary periods.²²² In addition to the funding under the ENPI, the neighbouring countries have been also offered financial assistance under additional programmes that target specific issues such as institution-building and support for meeting the governance targets outlined in the Action Plans.²²³

²¹⁹ European Commission, “Wider Europe–neighbourhood: a new framework for relations with our eastern and southern neighbours”, COM (2003) 104 final, 2003, accessed January 1, 2012, http://ec.europa.eu/world/enp/documents_en.htm.

²²⁰ Council of the European Union, “Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, Official Journal of the European Union, accessed January 17, 2012 http://ec.europa.eu/world/enp/pdf/oj_l310_en.pdf.

²²¹ Since the TACIS programme which included funding for reforms in Russia has now become a part of the ENPI, the EU’s financial assistance to Russia also originates from the new ENPI despite the fact that Russia is not a partner country of the ENP.

²²² See: The European Neighbourhood Policy Funding http://ec.europa.eu/world/enp/funding_en.htm.

²²³ According to the ‘breakdown of funds’ offered to each partner country including the regional programmes for 2007-2010, the eastern neighbours were offered around 1.25 billion EUR. The allocated funding for the Mediterranean neighbours for 2007-2010 was around 3.30 billion EUR. As opposed to the total figures, the per capita calculation does not display a high disproportion taking into consideration the difference between the number of countries in the eastern and southern neighbourhood and their populations. European Neighbourhood and Partnership Instrument: Funding 2007-2013 http://ec.europa.eu/world/enp/pdf/country/0703_enpi_figures_en.pdf.

The EU has increased its financial commitment to the eastern neighbourhood in line with the ENP. As outlined in the Country Reports and the Action Plans, migration was particularly important for the EU among the areas that have received funding. This was due to the increasing emphasis put by the Member States on migration cooperation with third countries. The second part of this Chapter focuses on the evolution of the external dimension of EU's migration policies.

3.2. The External Dimension of the EU's Migration Policies

3.2.1. The Increasing External Dimension in the EU Migration Policy

With the Schengen agreement in 1985, which aimed at abolishing the common borders between the signatory Member States, the EU level response to migratory pressures included transferring responsibilities and burden beyond the EU boundaries. With the aim of fighting with irregular migration flows, the EU has put forward policies to lessen this pressure through working on an external aspect of migration and pushing forward cooperation with third countries in the field of migration. The main focus has been on irregular migration and border management in particular in line with the creation of the border-free zone. The responsibilities transferred to third parties included handing over obligations to airline companies to check the documents of the passengers as well as appointing liaison officers to third countries to ensure that the passengers with inappropriate documents are handled on the territory of the country of origin before persons reach to the EU territory.²²⁴

The transfer of responsibility to third countries with respect to asylum application pressures are dealt with the 'safe third country' principle, mainly with the central European countries following the end of Cold War and in the process of EU accession as a condition to the EU accession deal. After the Dublin Convention in 1991, the Central and Eastern European countries were given the 'safe third country' status where the EU member states could return asylum seekers who entered the EU territory from the eastern neighbours of the Union.²²⁵ Enlargement has been an effective tool for the

²²⁴ Sandra Lavenex, "Shifting Up and Out: The Foreign Policy of the European Immigration Control," *West European Politics* 29 no. 2 (2006): 333.

²²⁵ Sandra Lavenex, *"Safe third countries: extending the EU asylum and immigration policies to Central and Eastern Europe"* (Budapest, Central European University Press, 1999).

EU to conclude readmission agreements with third countries. In line with the Schengen agreement procedures, accession countries have to sign readmission agreements with EU Member States.

The EU Member States also concluded 'readmission agreements' with various 'safe third countries' to return irregular migrants from these countries or who used these countries as transit routes to enter the EU. These early measures regarding the external dimension of the EU migration policy display a preventive approach reflecting the security orientation of the migration officials who then had full competence over decision-making. Under the readmission agreements, the EU member states and partnering countries agree to 'readmit to their territory without any formality persons with the nationality of that country who are residing without authorisation in the other country or who have crossed its frontier illegally'.²²⁶ Thus, the 'expulsion' of the irregular third-country nationals from within the borders the Union is managed through the countries that consent to signing a readmission agreement with the Union. Cooperation in the field of migration, readmission agreements in particular, has become a part of the EU partnership with third countries. In 1999, the European Council decision put forward readmission agreements as a pre-requisite to agreements with third countries.²²⁷ Following that, the EU member states reiterated their determination to include cooperation in the migration field, above all irregular migration, in future European Council meetings as well.

Readmission agreements have been concluded with several partner countries in East Asia, Western Balkans and in Eastern Europe. The first agreement between an EU country and a partner country was signed with Hong Kong in 2001 that came into force in 2004. The partnership agreement with Hong Kong was followed by agreements with Macao (2004), Sri Lanka (2005), and Albania (2005). Agreements were reached with the eastern neighbours (Moldova, Russia and Ukraine) and several western Balkan countries (Former Yugoslav Republic of Macedonia, the Republic of Montenegro, the

²²⁶ See: Readmission Agreements, Summaries of EU Legislations, Europa, accessed January 8, 2012 http://europa.eu/legislation_summaries/other/133105_en.htm.

²²⁷ Ibid.

Republic of Serbia and Bosnia and Herzegovina) in 2007.²²⁸ Although the European Commission has been given the competence to settle readmission agreements with Algeria, China, Morocco, Pakistan and Turkey, the negotiation process for readmission agreements have been highly challenging.²²⁹ Although the readmission agreements could be concluded at the EU level being part of the community competence if the Member States give the mandate to the Commission, the bilateral relations of member states with third countries are highly significant for the ‘removal’ of irregular migrants through bilateral readmission agreements or as a part of agreements including various issues as well as clauses related to removal of irregular migrants.²³⁰

In line with the targets of the Hague Programme, the EU member states approved ‘the Return Directive’ as a measure to combat with irregular migration in 2008. The Return Directive that aims at coordination among the Member States puts forward regulations to deport persons illegally staying in the EU countries. The Directive received high criticism from international organizations due to concerns in relation to the ‘return of irregular migrants in safety and dignity’.²³¹

3.2.2. The Global Approach to Migration

In 1994, the European Commission published a Communication on ‘Migration and Asylum’ with the aim of identifying key areas within which the EU Member States should enhance cooperation to tackle and meet the challenges of surrounding the issue of migration. The Communication put forward three focal issues that require EU level cooperation: dealing with the causes of migration pressure, controlling migration flows and keeping migration within the manageable structures and improving integration of

²²⁸ See Free Movement of Persons, Asylum and Immigration: Return and Readmission, Summaries of EU Legislations, Europa, accessed January 8, 2012
http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_migration/index_en.htm.

²²⁹ See Cooperation with third countries on migration
http://ec.europa.eu/home-affairs/policies/immigration/immigration_intro_en.htm.

²³⁰ Jean-Pierre Cassarino, “Beyond Asymmetries: Cooperation on Readmission in the EU neighbourhood” (paper presented at the EUSA Twelfth Biennial International Conference, Boston, Massachusetts, March 3-5, 2011) accessed January 1, 2011
http://euce.org/eusa/2011/papers/3b_cassarino.pdf.

²³¹ Amnesty International News, 18 June 2008, accessed January 9, 2012
<http://www.amnesty.org/en/news-and-updates/EU-return-directive-affects-dignity-security-irregular-migrants-20080704>.

migrants who are legally residing in the Union.²³² Although the Communication displayed a rather comprehensive approach with respect to migration issues, the Commission could not have a considerable effect on the Member States due to the lack of competence in the area.

The integration of migration policy within the external policies of the Union was first referred at the Tampere Council conclusions in 1999. In 2002, the Seville Council underlined that ‘any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of irregular immigration’.²³³ The Commission presented its first Communication in 2002 on ‘Integrating migration issues in the European Union’s relations with third countries’ highlighting the incorporation of the migration issue into the development programmes of the Union to address the root causes and reduce the migratory pressures to the EU.²³⁴ The Communication indicated that ‘migration development’ would be part of both existing and upcoming Association and Co-operation Agreements between the EU and third countries. On the other hand, targeted development programmes have been a highly contentious issue in the EU. It was argued that migration objectives could undermine genuine development concerns.²³⁵

The European Commission proposal ‘the Global Approach to Migration’ is a result of increasing tendency within the EU in terms of paying further attention to the external aspects of migration. Considering the migration pressures to the EU, mainly from the Mediterranean neighbours of the Union, the significance of boosting cooperation with

²³² European Commission, “Communication on Asylum and Immigration Policy,” COM (1994) 23 final, 1994.

²³³ Council of the European Union, “Presidency Conclusions. Seville, 21 and 22 June 2002,” 13463/02, 2002, accessed January 1, 2012 <http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002&bid=76&lang=en&id=>.

²³⁴ European Commission, “Integrating migration issues in the European Union’s relations with third countries,” COM (2002) 703 final, accessed January 2, 2012 http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2002&nu_doc=703.

²³⁵ Ben Hayes and Tony Bunyan, “Migration, Development and EU Security Agenda,” in *Europe in the World: Essays on EU Foreign, Security and Development Policies* (London: Bond, 2003), <http://www.statewatch.org/news/2003/sep/bhtb.pdf>.

the countries of origin and transit has increased. With the aim of having a more ‘comprehensive approach’ to migration issues, there was an agreement to offer increased legal migration opportunities to partner countries.

At the Informal meeting of the Heads of States in October 2005 during the UK Presidency, the Member States addressed the issue of migration as one of the challenges to be tackled as a response to globalization.²³⁶ It was mainly the Southern Member States of the EU that complained regarding the high risks of irregular migration across the Mediterranean. The meeting triggered a re-evaluation of the EU’s migration cooperation with third countries. Following the meeting, the Commission presented the communication ‘Priority actions for responding to the challenges of migration: First follow-up to Hampton Court’ in November 2005.²³⁷ The Communication underlined the measures to be taken as a response to the threat of irregular migration from the Mediterranean. Although the irregular migration from Sub Saharan Africa and North Africa was the main item of the agenda as a response to the Southern member states facing migratory pressures, the Commission also underlined the importance of the issue of migration in relation to Eastern neighbours of the Union as well.

The importance of the links between migration and development, economy and growth was highlighted in the Commission’s communication.²³⁸ In addition, legal migration, being an area relatively weak in the EU, also has become a part of the initiative to open up legal channels to fight with irregular migration. In December 2005, the ‘Global Approach to Migration: Priority actions focusing on Africa and the Mediterranean’ was agreed at the European Council meeting. In the Council conclusions of December 2005, it is stated that there is a ‘need for a balanced, global and coherent approach covering policies to combat illegal migration and, in cooperation with third countries, harnessing the benefits of legal migration’.²³⁹ The Council conclusions also highlighted the importance of the EU’s eastern, south eastern and southern neighbours for increasing

²³⁶ European Commission, “Priority actions for responding to the challenges of migration: First follow-up to Hampton Court,” COM (2005) 621 final, November 30, 2005.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Council of the European Union, “Brussels European Council 15/16 December 2005 Presidency Conclusions,” 15914/1/05 REV 1, January 30, 2006.

cooperation and the need for sufficient financial assistance to be distributed. In its communication ‘Global Approach to Migration: one year on’, the European Commission emphasizes the importance of responding the needs of the labour market through allowing for the admission of specific groups of migrants such as high skilled migrations or seasonal workers to the labour market.²⁴⁰ Bearing in mind the needs within the EU for seasonal or high skilled workforce as well as the needs in the EU’s partner countries, circular migration is also considered as a significant initiative. In line with the objective of having a more comprehensive approach to migration, the scheme to coordinate mobility partnerships with third countries are put forward by the European Commission. In this new scheme, the EU cooperates with Moldova and Cape Verde as the initial pilot partners.

3.3. Chapter Conclusions

The aim of this chapter was to present the evolution of the EU policy with respect to the WNIS region since the early 2000s. Despite the reluctance in the EU to develop strong bilateral links with the region after the end of the Cold War, the eastern enlargement of the EU paved the way for an increased EU involvement in the WNIS region. Although the EU had established a certain level of bilateral relations with the region with the introduction of the PCAs, the eastern enlargement of the EU has increased the importance of the region for the EU. The ENP was introduced as an umbrella policy for the EU to enhance its bilateral cooperation with the countries in its broader neighbourhood. This policy was offered both to the eastern and southern neighbours bearing in mind diverging regional priorities among the Member States. In 2008, the agreement reached at the EU level with respect to launching a specific regional policy towards the east. The launch of the Eastern Partnership in 2009 has demonstrated that there is a consensus in the EU with respect to further enhanced relations with the region.

As shown in the second part of the Chapter, the drive for ‘a common EU policy’ on immigration lays increasingly more emphasis on enhanced cooperation with third

²⁴⁰ European Commission, “On the global approach to migration one year on: towards a comprehensive European migration policy,” COM (2006) 735 final, November 30, 2006.

countries. Cooperation with the countries that are either long-standing source or transit of immigrants in the immediate neighbourhood of the EU has always been on the EU's agenda. Cooperation with the neighbours concerning the issue of immigration in particular has been stressed as one of the key objectives of the ENP due to EU member states' concerns about migratory pressures from EU's neighbourhood. The main focus has been on signing agreements with respect to readmission of asylum seekers and irregular immigrants. On the other hand, the impediments to cross-border mobility have moved up on the agenda of the new Member States. The shared aim in the EU to manage migratory pressures has led to broadening of the external dimension of EU's immigration policy. The following Chapter will exclusively focus on the member states and their specific policy preferences in relation to the external dimension of migration.

CHAPTER 4: Member States' policy preferences

This chapter presents an analysis of the official policy positions of France, Germany, the United Kingdom, Sweden and Poland pertaining to the EU migration policy. Focusing on the four case studies of the thesis (irregular immigration, visa cooperation, labour immigration and asylum cooperation), the chapter sketches out the main policy cleavages among the Member States that have considerable power and interest in shaping the EU policy towards their eastern neighbourhood with respect to immigration. This chapter is concerned with the main trends and the national positions of the Member States reflected at the EU level. It does not aim to present a thorough analysis of preference formation at national level. The main drivers of the national policy towards the eastern neighbours on each four case study areas are reviewed in line with the salience of the issue area for each of the Member States and their positions reflected in the course of EU level negotiations. This chapter constitutes the first level of the analysis presented in the research focusing on the Member States' policy preferences. As mentioned earlier, an analysis of the policy preferences and concerns of the Member States by and large constitutes the 'bargaining space'²⁴¹ for EU level negotiations. The chapter first focuses on the policy preferences of the three politically and economically strong member states, Germany, the United Kingdom and France. Following these three member states, the preferences of Sweden and Poland that have relatively divergent policy preferences from the first group are analysed.

4.1. Germany

Since the early 1970s, migration has gradually become an issue of high political salience in German politics. Between the 1950s-70s, Germany pursued an active post-war labour migration policy to fulfil the needs of rapid industrialisation. Following the oil crises of the early 1970s, a considerable percentage of the foreign labour from southern Europe returned home. Although labour demand was drastically reduced, an equally considerable amount of migrant workers stayed and became permanent residents. Moreover, the political unrest and economic instability in its broader neighbourhood starting in the 1980s, meant Germany became the main destination for

²⁴¹ Andrew Moravcsik, *The Choice for Europe: Social purpose and state power from Messina to Maastricht*, (London: University College London Press, 1999): 51.

asylum-seekers in the region due to its generous asylum policies. Immigration became one of the agenda items of the Christian Democratic Union (CDU) that came into power in 1982.²⁴² Although Germany did not become an immigration country officially until the 2001 decision of the FDP-Green coalition²⁴³, immigrants constituted more than 10 percent of the population by the end of 1990s.²⁴⁴

With increasing interdependence among the EU Member States due to the abolition of the internal borders with the Schengen agreement, the importance of EU level collective action to manage migratory pressures has increased for Germany. Since the Maastricht Treaty, Germany has pushed for an EU level response to migratory pressures and burden sharing among the Member States.²⁴⁵ As one of the main destinations for the migrants from the EU's immediate eastern neighbourhood in the aftermath of the Cold War in particular, Germany has been subject to high levels of migratory pressures due to its geographical proximity and historical ties with the region. As the EU borders shifted eastwards with the 2004/2007 enlargements, 'better control of migration' has become a fundamental component of the EU's partnership with the eastern neighbourhood for Germany.²⁴⁶ The shift of the Schengen borders after the accession of the CEECs increased the importance of cooperation with the eastern neighbours due to the potential increase of immigration and cross-border threats. This section presents a review of the official German policy position on immigration and asylum, and the way in which Germany is involved in the EU decision-making process with respect to the eastern neighbours of the EU.

Irregular Immigration

The fight against irregular migration has been one of the main priorities of Germany in relation to EU level cooperation with third countries. Germany has long considered the

²⁴² Christina Boswell and Dan Hough, "Politicizing migration: opportunity or liability for the centre-right in Germany," in *Immigration and Integration Policy in Europe: Why Politics – and the Centre-Right Matter* ed. Tim Bale (Oxon: Routledge, 2009): 23.

²⁴³ The former CDU/CSU did not declare that Germany was an immigration country.

²⁴⁴ Andrew Geddes, *The Politics of Migration and Immigration in Europe*, (Palgrave: London, 2003): 79.

²⁴⁵ Monika Bosche, "Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy" in *Germany's EU policy on asylum and defence* ed. Gunther Hellman (Hampshire: Palgrave Macmillan, 2006): 45.

²⁴⁶ Address delivered by Günter Gloser, Minister of State for Europe, at the ENP conference in Brussels entitled "Working together – strengthening the European Neighbourhood Policy" available at <http://www.deutsche-aussenpolitik.de/daparchive/anzeige.php?zaehler=9600>.

eastern neighbourhood of the EU an important source of, and transit for, irregular migrants. Among the WNIS, the main concern for Germany has been Ukraine due to the long shared land border between the EU and Ukraine.²⁴⁷ In 2004, it was estimated that Ukrainians constituted the largest illegally resident population in Germany.²⁴⁸ In 2005, Ukrainian nationals constituted 7.4 percent of the irregular entries according to data provided by the Federal Office for Migration and Refugees (BAMF).²⁴⁹ Although there has been a decrease concerning the number of irregular Ukrainian residents in Germany in 2006 and 2007, the region is still considered an important transit route.

During the German Presidency in 2007, Germany put special emphasis on EU level cooperation with the eastern neighbourhood in the area of migration. Developed primarily in response to irregular migration pressures from the Mediterranean, the Global Approach to Migration initially focused on the relations between the EU and the African countries.²⁵⁰ Addressing the eastern dimension of the Global Approach was considered one of the goals of the German Presidency. In the course of the German Presidency, the geographical focus of the Global Approach to Migration policy of the EU was expanded to include the eastern and south-eastern neighbours.²⁵¹

Further EU level dialogue with the eastern neighbours was also established through the EU 'migration missions'.²⁵² Germany has shown particular interest in the EU migration

²⁴⁷ Norbert Cyrus, German Country Report- Undocumented Migration-Counting the Uncountable. Data and Trends Across Europe. Clandestino Research Project - 6th Framework, 2008 (Revised in December 2009).

²⁴⁸ Annual Report on Asylum and Migration statistics 2004 and 2005: Synthesis Report, European Migration Network, September 2008.

²⁴⁹ Norbert Cyrus, German Country Report- Undocumented Migration-Counting the Uncountable. Data and Trends Across Europe. Clandestino Research Project - 6th Framework, 2008 (Revised in December 2009).

²⁵⁰ European Commission, "Communication on the global approach to migration one year on: towards a comprehensive European migration policy," COM (2006) 735 final, November 30, accessed January 2, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0735:EN:HTML>.

²⁵¹ Council of the European Union, "Press Release 2808th General Affairs Council Meeting Council Conclusions on extending and enhancing the Global Approach to Migration," Luxembourg, 10654/07, 17-18 June 2007, accessed January 1, 2012 <http://www.consilium.europa.eu/press/press-releases/search?command=d&id=&lang=en&doclang=EN&dockey=94803>.

²⁵² 'Migration Missions' are one of the recent tools of the EU cooperation with third countries in this field. The main aim of these missions is to foster and advance interaction between the EU and third countries. In the eastern neighbourhood, migration missions were organized to a number of Eastern Partnership countries including Ukraine, Belarus, Armenia and Georgia. Several of them were also arranged in the Mediterranean neighbourhood. See: DG Home Affairs, Cooperation with third countries on migration, accessed January 8, 2012

missions to the eastern neighbours including the ones targeted to Belarus in September 2009 and Ukraine in September 2010.²⁵³

Germany has also put great emphasis on ‘border management’ cooperation with its eastern neighbours at the national level, the aim being to curtail irregular immigration from the region. In addition to irregular cross border movement of people, the WNIS region has also been considered a transit for other cross-border criminal activities. A specialized national agency called ‘Joint Centre for Analysis and Strategy concerning Irregular Migration’ (Gemeinsames Analyse-und Strategiezentrum Irreguläre Migration) was founded following irregular immigration and cross-border crime threats from Ukraine in 2006.²⁵⁴ The aim of the centre was to address different types of cross-border crimes linked to irregular migration.

Visa Policy

With the introduction of the ENP and the Eastern Partnership, the EU’s visa policy towards the eastern neighbourhood has been on the EU agenda and of its partner countries. The high risks of irregular immigration and cross-border crime associated with the region paved the way for restricted legal migration channels to the EU for the citizens of the WNIS. The German short-term visa policy for Ukraine, Belarus and Russia has become particularly restrictive following the visa fraud scandal that occurred in 2004-2005.²⁵⁵ In 1999, a lenient visa policy was adopted towards Eastern Europe by the Federal Foreign Minister Joschka Fischer, despite opposition from the Ministry of Interior that had security-related concerns.²⁵⁶ Adopting a flexible approach, the Federal Foreign Office used the visa policy towards the region as a diplomatic

http://ec.europa.eu/home-affairs/policies/immigration/immigration_relations_en.htm.

²⁵³ Delegation of the European Union to Belarus, “Joint Statement by the EU and Belarus on the EU Migration Mission to Belarus of 7-9 September 2009,” September 10, 2009, accessed January 07, 2012 http://ec.europa.eu/delegations/belarus/press_corner/all_news/news/2009/20090910_01_en.htm
Delegation of the European Union to Ukraine, “Conclusions on the visit of the EU migration mission of 22 September 2010” September 29, 2010, accessed January 12, 2012

http://eeas.europa.eu/delegations/ukraine/press_corner/all_news/news/2010/2010_09_29_1_en.htm.

²⁵⁴ Cyrus (2008).

²⁵⁵ “A chilly season for Ukrainians in Germany,” Deutsche Welle, March 16, 2005, accessed January 7, 2012 <http://www.dw-world.de/dw/article/0,,1519617,00.html>.

²⁵⁶ “Chancellor Possibly Knew About Visa Row,” March 24, 2005, accessed January 7, 2012 <http://www.dw-world.de/dw/article/0,,1528946,00.html>.

instrument.²⁵⁷ However, the permissive visa policy towards the region was ceased after allegations of the inappropriate distribution of short-term visas in the region without appropriate controls. The visa fraud scandal received high public attention and put the Foreign Minister Fischer under strong pressure.²⁵⁸ The misconduct exhibited in the distribution of short-term visas initiated a drastic change in the hitherto relaxed policy of the Federal Foreign Office, particularly concerning Eastern Europe.²⁵⁹

During the negotiations of the Eastern Partnership, Germany maintained a very cautious line on EU's commitments to enhancing mobility for the citizens of the partner countries. Germany wanted to ensure that the partnership with the EU's neighbours did not oblige the Member States to abolish visa requirements for the citizens of the partner countries in the short-term.²⁶⁰ An interviewee underlined that the visa policy towards Eastern Europe has been a 'technical' issue in Germany.²⁶¹ Germany showed reluctance to support the abolition of visa requirement for the citizens of the eastern neighbours without carrying out a thorough evaluation of the partners' technical preparedness. On the other hand, the EC visa facilitation agreements that were concluded with Ukraine and Moldova (that have offered certain advantages for short term visas, including a reduction in visa fees) in 2007 were supported by Germany.²⁶² The visa facilitation agreements were seen as concessions to the eastern neighbours in return for taking greater responsibility for migration management; the visa facilitations were conditional on the basis that a readmission agreement with the EU was signed.

The abolition of the visa requirement for the eastern neighbours is still a red-line for Germany. Although the EU has reached an operational stage concerning visa-free travel for citizens of Russia, Ukraine and Moldova in 2010, Germany emphasises that their requirements have to be met, in order to realize visa liberalisation objectives.

²⁵⁷ Regarding the use of visa policy as a diplomatic instrument: Kevin Stinger, "Visa Diplomacy," *Diplomacy and State Craft* 15, no.4 (2004): 655-682.

²⁵⁸ Interview with a National Expert, September 2009, Berlin.

²⁵⁹ Charles Hawley, "Political Scandal: Joschka Fischer with His Back Against the Wall," *Spiegel Online International*, February 22, 2005, accessed January 7, 2012, <http://www.spiegel.de/international/0,1518,343108,00.html>; "Ukraine's President Stresses Aim to Join EU," *Deutsche Welle*, March 9, 2005, accessed January 7, 2012, <http://www.dw-world.de/dw/article/0,,1513014,00.html>.

²⁶⁰ Interview with an EU official D, July 2010, Brussels.

²⁶¹ Interview with a European Diplomat, July 2010, Brussels.

²⁶² Interview with Member State official A, May 2009, Brussels.

Labour Immigration

Starting in the mid-1950s, the accelerated industrialisation in the post-war period forced Germany to pursue an active migration policy to meet the unskilled and semi-skilled labour shortages.²⁶³ The temporary recruitment of low-skilled labour, mainly from southern and south-eastern Europe under the Gastarbeiter (guest-workers) scheme, aimed to fulfil the needs of rapid industrialisation until the 1970s. In the early 1970s, the global oil crisis precipitated an economic downturn in Western Europe, and as a result, paved the way for the abolition of the liberal approach to labour immigration. The Gastarbeiter scheme was based on the circulation and resettlement of guest-workers to their countries of origin after a period of time. Despite the restrictions attached to their temporary working permits, a considerable proportion of the guest-workers and their families stayed in Germany and became permanent residents.²⁶⁴

As the plans for the resettlement of the guest-workers were not fully achieved, it paved the way for economic and socio-cultural concerns in Germany. In view of the economic downturn, German citizens had to compete for jobs along with immigrant workers. Moreover, the cultural differences between immigrants who became permanent residents in German society, and the issue of social integration, became central to the immigration debate. Although Germany initially recruited guest-workers from a number of southern European countries, the ones that stayed were predominantly of Turkish origin. Rather than an economic concern, the social impact of immigration has been the main focus of German immigration policy.²⁶⁵ The labour immigration topic has remained to be a salient topic.

On the other hand, the restrictions on labour migration increased the inflows based on non-economic grounds. After settling, several immigrants brought their families to Germany based on family unification permits. Germany was also subject to very high

²⁶³ Philip L. Martin, 'Germany: Managing Migration in the Twenty-First Century' in *Controlling Immigration: a global perspective* ed. Wayne A. Cornelius et al., 2nd (Stanford: Stanford University Press:2004): 221-253.

²⁶⁴ Federal Ministry of Interior (2008) Migration and Integration: Residence law and policy on migration and integration in Germany, Berlin.

²⁶⁵ Christina Boswell, *The Political Uses of Expert Knowledge: Immigration Policy and Social Research* (Cambridge: Cambridge University Press, 2009): 108.

levels of asylum applications as a result of its then generous asylum policies. For the period between WWII and the 1990s, Germany received the highest number of asylum applications in Europe.²⁶⁶ The sharp increase in asylum applications was financially very costly for the public sector.

The supremacy of member states' competence concerning economic migration policy is highly essential for Germany. An interviewee claimed that the lack of a 'European labour market' and the existing differences among the Member States (such as the needs and legislations) particularly rule out the transfer of competences to the EU level.²⁶⁷ In Germany, economic migration is a policy area in which the federal and state level share competences. There is also a strong pressure from the Lander on the Federal level to adopt a restrictive position.

The European Commission's green paper published in 2005 on the management of economic immigration faced several objections from Germany.²⁶⁸ In the paper, the Commission argued for the development of labour immigration policies as a solution to compensate for the demographic needs in the EU. In its response to the green paper, Germany challenged the idea that 'continuous immigration' could be the sole solution to demographic decline. Germany was also critical about the linkage that was made between the fight against irregular migration, and the adoption of an EU level economic legislation. The Commission argued that the development of EU level rules regarding economic migrants could help decrease irregular immigration.²⁶⁹ In its response, Germany also pointed out the possible integration problems that might occur as a result of an active economic migration policy. Instead, Germany advocated that the priority should be given to circulation of 'potential labour pool' within the EU in view of the

²⁶⁶ Monika Bösch, "Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy, in *Germany's EU policy on asylum and defence* ed. Gunther Hellman. (Palgrave Macmillan, Hampshire, 2006): 30.

²⁶⁷ Interview with Member State official A, May 2009 Brussels.

²⁶⁸ Federal Republic of Germany, the Federal Government's Response to the Green Paper on an EU approach to managing an economic migration - Commission of the European Communities document COM (2004) 811 final of 11 January 2005," accessed January 7, 2012

http://ec.europa.eu/home-affairs/news/consulting_public/0016/contributions/germany_en.pdf

²⁶⁹ European Commission, "Green paper on an EU approach to managing migration," COM (2004) 811 final, January 11, 2005, accessed January 7, 2012
http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0811en01.pdf

restrictions in place with respect to the mobility of labour from the new EU Member States.²⁷⁰

Despite these reservations about adopting further legislation at the EU level on economic migration, Germany has been in favour of offering flexible economic migration opportunities to third countries including temporary and circular labour migration opportunities.²⁷¹ Legal migration opportunities are considered effective to manage migration and fight with irregular immigration in cooperation with third countries. At the G6 meeting in 2006, the German and French interior ministers, Schauble and Sarkozy, proposed an initiative on circular immigration and irregular immigration as a framework to manage migratory pressures.²⁷² The G6 meetings bring together the interior ministers of six EU Member States (the United Kingdom, France, Germany, Italy, Poland, and Spain) to discuss issues related to justice and home affairs including migration. The emphasis of the Franco-German initiative was on the integration of short-term economic migration opportunities into broader partnerships. The policy proposal that offers voluntary participation for economic migration found support among the Member States. The German-French proposal paved the way for the introduction of the Mobility Partnerships that aim to increase cooperation between the EU and third countries concerning migration management.

Asylum Cooperation

Germany has become one of the main targets for asylum seekers in Europe since the 1980s particularly due to its relatively liberal asylum laws.²⁷³ The instability along its eastern and southern borders in the aftermath of the Cold War triggered high levels of migration which was permitted on humanitarian grounds. Germany has been a recipient of asylum seekers mainly from the post-Soviet countries since the 1950s. 10,000 annual asylum applications had been made by the 1970s. As a result of the unrest in the post-Soviet countries as well as asylum being another way of entering the country (due to

²⁷⁰ Ibid.

²⁷¹ Interview with a National Expert, September 2009, Berlin.

²⁷² Interview with Member State official A, May 2009, Brussels.

²⁷³ Andrew Geddes, *The Politics of Migration and Immigration in Europe* (London: Palgrave, 2003): 85.

reduced legal immigration opportunities), 1.4 million asylum seekers came to Germany between 1988-93 taking advantage of the liberal asylum policy.²⁷⁴

Situated then at the eastern end of the EU bordering the unstable and conflict prone post-Soviet countries, Germany pushed for an EU level solution due to the sudden rise in asylum applications towards the end of 1980s - the end of the Cold War.²⁷⁵ Due to the common Schengen borders, other member states, to a certain degree, shared this problem as well. Within the Dublin Regulations framework in the early 1990s, the Member States agreed on a number of 'safe third countries' from central Europe. According to the principle of this agreement, the applications of asylum seekers arriving the EU via a 'safe third country' could be denied.

Germany prioritizes operational cooperation with the eastern neighbours concerning the refugee issue.²⁷⁶ However, Germany was one of the Member States that rejected the UK policy proposals regarding safe-havens outside of the EU put forward at the Thessaloniki European Council. After the Thessaloniki meeting, the European Commission came up with the Regional Protection Programmes, which was a compromise proposal. These programmes underline the importance of the compliance of the countries in the neighbourhood with international obligations rather than transferring responsibility outside. In its response to the Commission's green paper on asylum, Germany showed its support to the European Commission's proposal regarding the Regional Protection Programmes.²⁷⁷

Conclusions

This section concludes that Germany prioritizes a restrictive agenda with respect to EU's migration policy towards the eastern neighbourhood. Cooperation with the eastern

²⁷⁴ Kathrin Prumm and Stefan Alscher, "From Model to Average Student: the Europeanization of Migration Policy and Politics in Germany" in *The Europeanization of National Policies and Politics of Immigration* eds. Thomas Faist and Andreas Ette (Basingstoke: Palgrave Macmillan, 2007): 76.

²⁷⁵ Geddes, *The Politics of Migration and Immigration in Europe*, 85-86.

²⁷⁶ Interview with Member State official A, May 2009, Brussels.

²⁷⁷ Federal Republic of Germany, "Replies to the Green Paper on the future Common European Asylum System – Commission of the Communities document COM(2007) 301 final dated 6 June 2007, JLS/1777/07-EN, Berlin, August 28, 2007, accessed January 7, 2012 http://ec.europa.eu/home-affairs/news/consulting_public/0010/contributions/member_states/germany_en.pdf.

neighbours on the issues of irregular migration and asylum is crucial as the region is one of the main sources of irregular migrants in Germany. There is a high level of reluctance concerning the policies that could enhance the mobility for the citizens of the eastern neighbours. Since 2004, there has been an increasing scepticism concerning the liberalisation of visa policy towards the region. On the issue of labour migration, Germany has taken an active role by proposing the circular migration proposal along with France. However, the supremacy of the Member States' competence in this area is highly important for Germany.

4.2. The United Kingdom

As a member state that opted out from the EU's common border regime, the UK is characterized by its strong attachment to national policy making and control regarding its external borders.²⁷⁸ The British opt-out from Title IV TEC, gained during the Amsterdam Treaty negotiations, provided flexibility for the UK in terms of the policies that it could participate in (except the visa and border policy domains that are directly related to the Schengen regime).²⁷⁹ The opt-out decision is highly linked to the traditional stress of the UK on external border security rather than internal security measures.²⁸⁰ However, the increasingly global dimension of the immigration phenomenon and interdependencies between the EU Member States increase the advantages of EU level cooperation for the UK. Taking into account the leverage of EU level collective action, the UK takes part in the EU level cooperation concerning fighting with irregular migration and managing asylum policies.

In 2002, the British Foreign Secretary gave a high level of support to the development of an EU level policy with respect to the EU's eastern neighbourhood which included migration related measures flagging the region as being a hub for irregular migration

²⁷⁸ In 2005, the five-year plan of the Labour government for 2005-2010 on asylum and immigration was published which put emphasis on national policy-making rather than referring to the EU or Europe. British Home Office, *Controlling our borders: making migration work for Britain. Five-year strategy for asylum and immigration*, Cm. 6472 (London: HMSO, 2005).

²⁷⁹ Andrew Geddes, "Getting the best of both worlds? Britain, the EU and migration policy," *International Affairs* 81, no.4 (2005): 738.

²⁸⁰ *Ibid.*

and trafficking and route to Europe.²⁸¹ The irregular migration threat from the region to the Schengen and UK borders has raised the importance of EU level cooperation in the aftermath of the 2004/2007 enlargements. Parallel to its domestic policy towards the region, the UK supported EU level involvement in the region. This section presents the general policy position of the UK focusing on the four sub-sections of migration policy.

Irregular Immigration

Cooperation against irregular migration has been one of the main policy priorities of the UK at the EU level. Despite the traditional reluctance of the UK regarding transferring competences to the EU level, it has been actively involved in intergovernmental and practical cooperation at the EU level regarding migration.²⁸² During the UK Council Presidency in 1986, the Thatcher government started an initiative which led to setting up the Ad Hoc Group on Immigration, intergovernmental cooperation of high level immigration officials from interior ministers of member states in 1988.²⁸³ The UK opted in a substantial amount of EU legislation concerning irregular migration including the Council Directive on mutual recognition of decisions on the expulsion of third country nationals (2001) and the Directive on the obligations of carriers transporting foreign nationals (2004).²⁸⁴ The UK also took part in the Council Decision in 2004 on the organisation of joint flights for removals from the territory of two or more member states of third-country nationals who were subjects of individual removal orders agreed.²⁸⁵ The UK also participates in the EU level readmission agreements that are

²⁸¹ Letter of the British Foreign Secretary Jack Straw to the Spanish Presidency of the EU, 28th January 2002, cited in Comelli (2004): 99.

²⁸² Andreas Ette and Jurden Gerdes, "Against Exceptionism: British Interests for Selectively Europeanizing its Immigration Policy in *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union* eds. Thomas Faist and Andreas Ette (Basingstoke: Palgrave Macmillan, 2007): 96.

²⁸³ Juliet Lodge, Sustaining freedom, security and justice – from terrorism to immigration, *Liverpool Law Review* 24, no.1-2 (2002): 49.

²⁸⁴ Council of the European Union, "Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals," OJL 149/34, June 2, 2001, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0040:en:NOT>; Council of the European Union, "Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data," OJL 261, August 6, 2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0082:EN:HTML>.

²⁸⁵ Council of the European Union, "Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (2004/573/EC)," OJL 261/28, August 6, 2012 <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2004:261:SOM:EN:HTML>

signed with third countries to tackle the return of irregular migrants.²⁸⁶ Irregular migration was one of the main priority areas for the UK during its Presidency in the second half of 2005. The Global Approach to Migration (i.e. the EU policy framework on the external dimension of migration) was agreed during the UK Presidency.²⁸⁷

In the framework of the ENP, the UK has put considerable emphasis on cooperation with the eastern neighbours in the area of fight against irregular migration. Although the external borders of the UK are geographically less threatened in comparison to other Member States concerning migratory pressures, it has been difficult for the UK to tackle these issues without cooperating with the rest of the EU. The UK has contributed to the EU migration missions to Belarus in September 2009²⁸⁸ and to Ukraine in September 2010.²⁸⁹

Instead of producing hard law mechanisms at the EU level, the UK traditionally prefers practical cooperation among the Member States.²⁹⁰ Trans-governmental networks in the area of migration are highly important to cooperate with the neighbours.²⁹¹ The General Directors' Immigration Services Cooperation (GDISC) could be given as an example. Focusing on practical cooperation between the EU and its eastern neighbours, the GDISC has become an important platform for the EU.²⁹² These networks offer practical cooperation among different actors including third countries and other international organizations such as the International Organization for Migration (IOM) or the UN Refugee Agency (UNHCR). Ukraine particularly is an important partner for the UK

²⁸⁶ Florian Trauner and Imke Kruse, "EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood," *CEPS Working Document* 290 (2008), accessed January 2, 2012

<http://www.ceps.be/book/ec-visa-facilitation-and-readmission-agreements-implementing-new-eu-security-approach-neighbour>.

²⁸⁷ Council of the European Union, "Brussels European Council 15/16 December 2005 Presidency Conclusions," 15914/1/05 REV 1, January 30, 2006.

²⁸⁸ Joint Statement by the EU and Belarus on the EU Migration Mission to Belarus of 7-9 September, 2009 (10/09/2009)

http://ec.europa.eu/delegations/belarus/press_corner/all_news/news/2009/20090910_01_en.htm.

²⁸⁹ Conclusions on the visit of the EU migration mission of 22 September 2010 (29/09/2010)

http://eeas.europa.eu/delegations/ukraine/press_corner/all_news/news/2010/2010_09_29_1_en.htm.

²⁹⁰ Interview with Member State official C, September 2009, London.

²⁹¹ Interview with Member State official C, September 2009, London.

²⁹² GDISC is a network of General Directors or Director Generals of Immigration Services in Europe focusing on practical cooperation on issues related to asylum, managed migration, irregular migration, management of immigration services and integration. The Secretariat of GDISC is currently based in the United Kingdom and chief executive is the head of the UK Border Agency.

within the GDISC in the area of ‘capacity-building’ to fight against irregular immigration.²⁹³

Visa Cooperation

The position of the UK regarding the EU’s short-term visa policy towards third countries is different from the other Member States that are analysed in the thesis. Due to its opt-out from the Schengen agreement, the decisions regarding which countries would be offered UK visa waiver are taken at the national level. The UK maintains its full competence over short-term and long-term national visas. The decisions regarding abolishing visa requirements for a third country are negotiated bilaterally with the third country after a risk assessment outside of the EU framework. Although the UK is not a part of the Schengen system, it is interested in the decisions that are taken regarding the Schengen visa cooperation with third countries due to the repercussions of these decisions for its own border security.

The UK Border Agency (UKBA) within the Home Office is the main governmental body that is responsible with the management of the visa cooperation with third countries. In addition to the UKBA, the Foreign and Commonwealth Office (FCO) is involved in decision-making due to the diplomatic dimension of visa decisions. In line with its emphasis on border security, the UKBA traditionally adopts a security-oriented approach towards visa waiver decisions. As opposed to the UKBA, the facilitation of mobility for the citizens of the WNIS to enter the Schengen zone is considered important for the FCO to advance the relations with these neighbours.²⁹⁴ The UK puts high emphasis particularly on the relations with Ukraine and Moldova.

The EU level developments regarding the facilitation of short-term travel between the EU and the eastern neighbouring countries are not applicable for the UK bearing in mind that it is not a signatory to the Schengen Agreement.²⁹⁵ When the EU signed visa facilitation and readmission agreements with Ukraine and Moldova in 2007, the UK only took part in the readmission cooperation. Similarly, the visa liberalisation Action

²⁹³ Interview with Member State official I, June 2011, London.

²⁹⁴ Interview with Member State official D, December 2009, London.

²⁹⁵ Interview with Member State official I, June 2011, London.

Plans for Ukraine and Moldova (agreed respectively in 2010 and early 2011) are only valid for short-term Schengen visas.

Labour Immigration

The UK has a long history of immigration initially from Ireland, the Commonwealth and the British colonies based on economic grounds due to the liberal British policy until the 1960s. Primarily due to electoral concerns, both the Conservative and the Labour parties tightened up their policies concerning migration. Restrictions were introduced in particular on the Commonwealth immigration in the 1960s and 1970s.²⁹⁶ At the end of the 1990s, the Labour government reviewed the tight immigration policy due in particular to the calls from employers. After 1997, the work permits for immigrants systematically increased.²⁹⁷ This was primarily for the highly skilled economic migration category. With the introduction of Highly Skilled Migrant Programme (HSMP) in 2002, the UK has opened its borders to highly skilled economic immigrants without pre-confirmed job offers given that they qualify for the scheme with their educational and professional experiences.²⁹⁸

In 2003, the UK (along with Sweden and Ireland) announced that it was going to allow the citizens of the then upcoming EU Member States from central Europe to work in the UK. In 2008, the Tier 1 visa replaced the HSMP with minor changes regarding admission conditions. The main policy shift regarding labour immigration took place with the Conservative-Liberal Democrat coalition government that came into power in 2010. Parallel to the general reservations of the Conservative party particularly on the issue of migration, the conditions to apply for a Tier 1 visa became harder and an annual limit regarding the number of economic migrants who could be granted a Tier 1 visa was introduced in 2011.²⁹⁹

²⁹⁶ Zig Layton-Henry, "Britain: Immigration Control to Migration Management" in *Controlling Immigration: a global perspective* ed. Wayne A. Cornelius et al. 2nd (Stanford: Stanford University Press, 2004): 301-11.

²⁹⁷ Martin Schain, *The Politics of Immigration in France, Britain and the United States: a comparative study*, (New York: Palgrave Macmillan, 2008): 137.

²⁹⁸ Ibid.

²⁹⁹ Home Office UK Border Agency, Annual Limit Tier 1 and Tier 2 visa applications, 24 November 2010, accessed January 8, 2012
<http://www.ukba.homeoffice.gov.uk/sitecontent/newsfragments/35-t1-t2-annual-limits>.

The UK's labour migration policy has been principally a national domain.³⁰⁰ However, the UK has given its support to voluntary schemes that include legal migration cooperation integrated within the broader EU cooperation with third countries. The Global Approach to Migration was agreed during the UK Presidency that introduced a holistic approach towards the management of migration in cooperation with third countries, including the legal immigration dimension. In line with this, the Mobility Partnerships as pilot frameworks that allow for voluntary cooperation with partner countries regarding legal migration with interested Member States were also supported by the UK. However, the UK is highly reluctant towards taking part in the labour migration dimensions of the Mobility Partnerships.³⁰¹ It did not take part in the Mobility Partnership signed with Moldova in 2008.³⁰² Although the UK participates in the Mobility Partnership cooperation with Georgia, the focus has been on 'document security' rather than labour migration.

Asylum Cooperation

In addition to the fight against irregular migration, the EU level cooperation in the area of asylum has been a priority for the UK. The asylum applications steadily increased after the break-up of Yugoslavia. The UK became one of the main destinations in Europe for asylum seekers. The highest levels were reached in the early 2000s.³⁰³ The increase in asylum demands put pressure on the UK to seek further cooperation at the EU level concerning tackling the asylum and irregular migration pressures. The UK participated in all the EU legislation concerning asylum.³⁰⁴ The UK also took an active role concerning the EU regulations on the Dublin system in relation to deciding on the Member States' responsibility for processing an asylum application and the EuroDac

³⁰⁰ Andrew Geddes, "Getting the best of both worlds? Britain, the EU and migration policy," *International Affairs* 81, no.4 (2005): 724.

³⁰¹ Interview with Member State official I, June 2011, London.

³⁰² Moldova Ministry of Foreign Affairs and European Integration (2010) Moldova EU Mobility Partnership Newsletter Edition 2, accessed January 8, 2012 http://www.mfa.gov.md/img/docs/bi_mp_nr2_en.pdf.

³⁰³ Geddes, "Getting the best of both worlds? Britain, the EU and migration policy," 727.

³⁰⁴ These include the Directive on minimum standards for giving protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between EU Member States in receiving such persons (July 2001), minimum standards for the reception of asylum seekers in EU member states (December 2002), minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and on common minimum standards on procedures for granting or withdrawing refugee status (2004) that were agreed at the EU level on reception conditions, asylum procedures and qualifications.

system that enables the Member States to compare the fingerprints of asylum applicants and irregular immigrants in line with the Dublin Regulations.³⁰⁵ However, these policies required only little change in the UK's domestic legislation.³⁰⁶

The UK has been highly active concerning the development of the external dimension of EU's asylum policy. The Regional Protection Programmes proposal of the European Commission was mainly affected by the UK initiative in 2003 concerning the processing of asylum applications outside of the EU borders. Due to the pressures faced at the domestic level, the then Prime Minister Tony Blair wanted to tackle the asylum problem at the EU level. Sending a letter to the Greek Presidency ahead of the European Council meeting of the Heads of States, Tony Blair presented an initiative on the processing of asylum applications outside of the EU at special processing centres.³⁰⁷ The actual initiative did not receive enough support from the Member States (except Denmark and the Netherlands) due to concerns in relation to the human rights records of third countries. However, it paved the way for the development of the European Commission's proposal on increased cooperation with third countries in the area of asylum. The European Commission followed up with a communication proposing the 'Regional Protection Programmes' as pilot systems in the EU's neighbourhood.

Conclusion

Owing to the UK 'opt-out' from Title IV TEC on migration settled during the Amsterdam Treaty negotiations in 1997, the UK had the possibility to take part in measures in accordance with its national interest. Despite the flexibility it has gained, there is still an 'EU dimension' with respect to the UK's migration policy. This is particularly relevant for irregular migration and asylum cooperation as the UK used its 'opt-in' option with respect to these two policy areas to a great extent.³⁰⁸ EU level

³⁰⁵ Geddes, "Getting the best of both words? Britain, the EU and migration policy," 756.

³⁰⁶ Andreas Ette and Jurden Gerdes, "Against Exceptionism: British Interests for Selectively Europeanizing its Immigration Policy" in *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union* eds. Thomas Faist and Andreas Ette (Basingstoke: Palgrave Macmillan, 2007): 99-100.

³⁰⁷ Sarah Leonard and Christian Kaunert, "Reconceptualising the audience in securitization theory," in *Securitization Theory: How Security Problems Emerged and Solved*, ed. Thierry Balzacq (Oxon: Routledge, 2011): 70.

³⁰⁸ Andrew Geddes, "Getting the best of both words? Britain, the EU and migration policy," 725.

engagement would be beneficial for the UK in terms of addressing the challenges faced in these two areas as the leverage of the EU is much higher.³⁰⁹

Short-term visa policy and labour migration are considered strictly national domains in line with its opt-out from Title IV TEC measures and the Schengen agreement. On the other hand, the UK pushed for the development of a holistic approach with respect to the external dimension of migration in the course of the Global Approach to Migration negotiations in 2005. The increased incorporation of greater legal migration channels into the cooperation with third countries at the EU level is supported by the UK. However, its participation in EU level measures has been limited.

4.3. France

Since the early 1980s, immigration has become a salient topic in French politics.³¹⁰ France has gradually become one of the main immigration countries in Western Europe starting from the 1920s. It has attracted migrants particularly from its neighbours and former colonies.³¹¹ By the 1950s, an open labour migration policy was adopted in France similar to other Western European countries, lasting until the economic decline triggered by the oil crises in the 1970s. The weakening economy paved the way for restrictions on labour migration.³¹² Whilst economically-motivated immigration from other European countries decreased following the recession, the enduring non-European migratory pressures increased the salience of migration issue. Public concerns were predominantly related to the integration of migrants from former French colonies who became permanent residents. These concerns paved the way for increasing support for the anti-immigrant far-right party Front National.³¹³ Both the Socialists and the right-wing parties started to reflect on these concerns in the course of the 1980s and 1990s. Whilst both groups adopted a restrictive approach towards immigration and asylum in France, the Socialists supported pro-diversity policies with respect to the integration of

³⁰⁹ Geddes, "Getting the best of both worlds? Britain, the EU and migration policy," 724.

³¹⁰ Andrew Geddes, *The Politics of Migration and Immigration in Europe* (London: Palgrave, 2003): 56.

³¹¹ Geddes, *The Politics of Migration and Immigration in Europe*, 53-54.

³¹² Geddes, *The Politics of Migration and Immigration in Europe*, 54.

³¹³ James F. Hollifield, "France: Republicanism and the Limits of Immigration Control," in *Controlling Immigration: a global perspective* ed. Wayne A. Cornelius et al. 2nd (Stanford: Stanford University Press, 2004): 193.

existing migrant groups.³¹⁴ Since the 2002 elections, immigration has increasingly been considered a security issue threatening the public order in France.³¹⁵

In the course of France's Council Presidency in 2007, immigration was one of its main priorities. In the course of the French Presidency, the French President Sarkozy put forward the European Pact on Immigration and Asylum in September 2008.³¹⁶ In addition to EU level cooperation in the areas of asylum, irregular and legal immigration, the European Pact on Immigration and Asylum underlined enhanced cooperation with third countries regarding migration. The geographical priority for France in the neighbourhood has traditionally been North Africa.³¹⁷ However, the importance of cooperation with the eastern neighbours of the EU has increased due to the enlargement. Focusing on the four case study areas, this section presents the main policy positions of France with respect to the eastern neighbourhood.

Irregular Immigration

Irregular immigration has been the most politically salient dimension in the area of migration for France.³¹⁸ Since the early 1990s, the number of irregular immigrants who were detained increased more than three times compared to the 1980s.³¹⁹ The main groups of irregular immigrants are from the Magreb region and the Middle East in line with the historical links of France with these regions.³²⁰ The shared land border

³¹⁴ The Socialists were in power between 1981-86, 1988-1993 and 1997-2002.

³¹⁵ Sally Marthaler, "Nicolas Sarkozy and the politics of French immigration," *Journal of European Public Policy* 15, no.3 (2008): 382-397.

The impact of the security-oriented approach had implications on internal EU mobility as well. In 2010, the emphasis that was put on the security and public order dimension triggered the deportations of the Roma population (who were EU citizens from Bulgaria and Romania) despite the free movement principle in the EU. For a detailed analysis of the French deportation of Roma, See: Yasha Maccanico, "France: Collective expulsions of Roma people undermines EU's founding principles," *Statewatch Journal* 20, no. 2 (2010) available at: <http://database.statewatch.org/article.asp?aid=30002>

³¹⁶ Council of the European Union, "The European Pact on Immigration and Asylum (13440/08)," September 24, 2008 (07.10), accessed January 8, 2012 http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_migration/jl0038_en.htm

³¹⁷ Ministry of Immigration, Integration, National Identity and Solidarity Development (2010) 2009 Annual Policy Report-European Migration Network

³¹⁸ Martin Schain, *The Politics of Immigration in France, Britain and the United States: a comparative study*, (New York: Palgrave Macmillan, 2008): 69.

³¹⁹ Martin Schain, *The Politics of Immigration in France, Britain and the United States: a comparative study*, 71.

³²⁰ French Ministry of Immigration, Integration, National Identity and Solidarity Development, 2008 Annual Policy Report-European Migration Network, 2009.

between the EU and the eastern neighbours after the eastern enlargements of the EU increased the concerns related to migration.³²¹ Yet, France is a transit zone rather than a destination for the irregular immigrants from Eastern Europe. The migrants from Russia, Ukraine and Moldova tend to use France as a transit point to reach the Iberian peninsula.³²²

Similar to the other signatory countries to the Schengen agreement, the abolition of internal borders has significantly changed the management of border control in France. With the aim of fighting against irregular cross-border movements, the Member States adopted several policies in partnership with third countries. These include both conventional readmission agreements as well as ‘concerted management’ negotiations regarding migration flows, particularly to cooperate with the Southern neighbourhood.³²³

France is a signatory to the community readmission agreements with Ukraine and Moldova. With Belarus, a ‘resolution specifically concerning the issue of consular travel documents’ has been agreed at the bilateral level and encompasses cooperation regarding movement of persons, border surveillance and solidarity development with a rather holistic approach to immigration cooperation.³²⁴ The focus has been on the irregular migration threat.

Visa Cooperation

Similar to Germany and the UK, France has shown reluctance towards easing cross-border mobility for the citizens of the eastern neighbours due to irregular migration concerns from the region, despite the calls from the member states that have rather a liberal approach. At the EU-Ukraine Summit that took place in Paris during the French Presidency, there was a broad agreement on the ‘long term perspective’ towards visa liberalisations without any clear guidelines. This was particularly apparent concerning

³²¹ Interview with Member State official F, September 2010, Brussels.

³²² Ibid.

³²³ The French Ministry of Foreign and European Affairs, “Africa-France: Emphasis on ‘concerted’ management of migratory flows,” accessed January 8, 2012

http://www.diplomatie.gouv.fr/en/spip.php?page=article_imprim&id_article=8666.

³²⁴ French Ministry of Immigration, Integration, National Identity and Solidarity Development, 2009 Annual Report- European Migration Network, 2010.

the negotiations regarding the Eastern Partnership in 2009. France, along with Germany, refused to make commitments regarding the abolition of visa requirements for the eastern neighbours of the EU.

In 2010, there was as a shift regarding the French position on the visa liberalisation negotiations with Russia. France prioritised and pushed for reaching an agreement at the EU level regarding giving clear guidelines and moving to an operational stage with Russia on the issue of short-term travel. Their position towards Russia paved the way for concessions regarding Ukraine and Moldova as well. Although France had been lukewarm regarding facilitation of mobility for the WNIS region, visa liberalisation for the Russian citizens is the main priority in the region.³²⁵

Labour Immigration

Between the 1950s and 1970s, there was a high demand for economic labour in France. As opposed to Germany that considered the initial labour immigrants temporary, France was open to the naturalisation of migrants in line with its *jus soli* (birth right citizenship) principle.³²⁶ Several bilateral agreements were signed with other countries in and outside of Europe for economic immigrant recruitment. Between the 1950s and 1960s, France adopted a highly flexible approach as immigrants who had illicitly come in to the French territory were able to get a legal status after their arrival if they could get an employment offer. This was linked to the fact that labour immigration was predominantly managed by the employers rather than the state.³²⁷ By the mid-1960s, the French government initiated its attempts to control and regulate immigration.³²⁸ The main policy change came with the economic downturn of 1974 which brought about strict restrictions to the recruitment of foreign labour as the need for low skilled immigration diminished.³²⁹ These restrictions were also triggered by the concerns related to increasing immigration from former French territories following the decolonization in North Africa, particularly from Algeria, Morocco and Tunisia, in the

³²⁵ Ibid.

³²⁶ Geddes, *The Politics of Migration and Immigration in Europe*, 57.

³²⁷ Philip E. Ogden, "Labour Migration to France," in *The Cambridge Survey of World Migration* ed. Robin Cohen (Cambridge: Cambridge University Press, 1995): 262.

³²⁸ Aleg Hargreaves, *Immigration and race and ethnicity in contemporary France* (London: Routledge, 1995): 179.

³²⁹ Geddes, *The Politics of Migration and Immigration in Europe*, 54.

aftermath of the 1960s. The restriction of labour immigration paved the way for an increase in other forms of immigration such as family unification, which has become rather difficult to curtail.³³⁰

Similar to Germany and the United Kingdom, France has shown reluctance towards EU level management of economic immigration. Taking into account the intra-EU restrictions regarding labour mobility following the eastern enlargement of the EU, France has been unwilling concerning opening up economic immigration possibilities for the eastern neighbours. As detailed in the previous section on Germany, the Franco-German coalition supported the circular immigration proposal in early 2006 in line with the need for providing legal immigration incentives for third countries to cooperate in the area of migration. In line with this initiative, France also showed its commitment to the Mobility Partnership that was concluded with Moldova which incorporated the Franco-German circular migration proposal (including irregular and legal migration dimensions and development aspects) in the framework of migration cooperation.³³¹

Asylum Cooperation

France was highly involved in the EU level negotiations regarding the further integration among the Member States in the area of migration and asylum ahead of the Amsterdam Treaty.³³² The EU level cooperation in the area of asylum has considerably strengthened the management of asylum demands in France.³³³ Since the 1990s, the evolution of 'safe third country' mechanisms in Europe has allowed France to send asylum seekers to third countries. Following the agreement on the Dublin Regulations in 2003 among the Member States, France has been able to control the asylum pressures through transferring asylum applications to other Member States.

Parallel to the other Western European countries, France also faced increasing asylum applications in the second half of the 20th century. The numbers peaked in 1990 in the

³³⁰ Ibid.

³³¹ Moldova Ministry of Foreign Affairs and European Integration (2010) Moldova EU Mobility Partnership Newsletter Edition 2, accessed January 8, 2012
http://www.mfa.gov.md/img/docs/bi_mp_nr2_en.pdf.

³³² Ibid

³³³ Geddes, *The Politics of Migration and Immigration in Europe*, 74.

aftermath of the Cold War reaching more than 60.000.³³⁴ Despite another peak which was experienced between 2003-04, the acceptance rates lowered in France particularly in line with the agreements with the other European countries on the issue of immigration.³³⁵ Between 2000-09, only 18-27 percent of the applications were accepted.³³⁶ France also put forward a number of unfavourable policies for asylum seekers limiting their financial and social conditions with the aim of discouraging potential future asylum seekers.³³⁷

Regarding asylum cooperation with third countries with the establishment of Regional Protection Programmes (RPPs), France was one of the Member States that opposed the initial proposal of the UK on the issue of processing asylum applications outside of the EU.³³⁸ After the publication of the European Commission proposal on the RPPs, France along with Spain showed its objection to the establishment of transit processing centres in North Africa. However, there were not strong objections regarding the development of the programmes in the eastern neighbourhood.

Conclusion

Among the countries with whom the EU cooperates within the ENP, the priority region for France is the southern neighbours. Since the initial debates at the EU level regarding the introduction of a new neighbourhood policy for the EU, France has pushed for enhanced cooperation between the EU and the Southern neighbourhood. In the area of migration, France has not been subject to high levels of immigration from the region as it is considered a transit rather than a destination for the irregular immigrants originating from the eastern neighbourhood. Yet, France did not support further liberalisation of EU's migration policy. As discussed above, the main aim of the 'circular migration

³³⁴ James F. Hollifield, "France: Republicanism and the Limits of Immigration Control," in *Controlling Immigration: a global perspective* ed. Wayne A. Cornelius et al. 2nd (Stanford: Stanford University Press, 2004): 195.

³³⁵ Jane Freedman, *Immigration and Insecurity in France* (Aldershot: Ashgate, 2004): 55-70.

³³⁶ Martin A Schain, "The Border: The Immigration Dilemma and the State in France," Prepared for the Biennial Conference of the European Union Studies Association March 3-5, 2011): 14.

³³⁷ Ibid.

³³⁸ Human Rights Watch, *European Union: Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees*, October 17, 2006, accessed January 8, 2012 <http://www.unhcr.org/refworld/docid/4565dfbb4.html>.

policy' proposal of France and Germany was to increase irregular migration cooperation with third countries.

However, one could argue that there has been a shift towards offering more mobility-oriented policies in the east. The relations with the WNIS region have moved up on France's agenda particularly due to its increased interest in EU-Russia relations. As France wanted to increase the EU commitments towards Russia in the area of mobility in 2010, this had implications particularly on the EU policy towards Ukraine and Moldova on the subject.

4.4. Poland

As a transit country rather than a traditional immigrant destination, immigration has not yet been a politically significant concept for Poland at the national level.³³⁹ The EU integration process has been a significant factor in relation to the formation of the post-Soviet Polish immigration policy.³⁴⁰ Poland had to abide by the requirements concerning accession to the EU (including the Schengen border zone) and transpose the relevant EU *acquis* to its national law. The EU financial assistance mainly targeted justice and home affairs issues including border management, visa and migration policies, bearing in mind the shift of the Schengen borders eastward with the eventual accession of Poland to the Schengen zone.³⁴¹ Poland's external border has become one of the longest external land borders of the EU. It was offered substantial EU financial assistance through the pre-accession funding programme of the EU. This section presents an analysis of the policy position of Poland regarding immigration cooperation with the eastern neighbours in four areas.

³³⁹ At an EU informal summit on October 20, 2006 in Finland, the Polish President underlined that illegal immigration is not a problem for Poland as it is the case for the Southern neighbours of the EU, Germany or France.

Ministry of Foreign Affairs of the Republic of Poland, Statement by President of the Republic of Poland Lech Kaczynski during EU summit in Finland, October 20, 2006, accessed January 8, 2012 http://www.msz.gov.pl/index.php?page=9597&lang_id=en&bulletin_id=16&document=2081.

³⁴⁰ Krystyna Iglicka, Piotr Kaźmierkiewicz and Agnieszka Weiner, "Poland" in *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue* eds. Jan Niessen, Yongmi Schibel and Cressida Thompson (Brussels/Warsaw, Migration Policy Group, 2005), available at: http://www.migpolgroup.com/publications_detail.php?id=119.

³⁴¹ European Commission, "Regular Report from the Commission on Poland's Progress towards Accession," October 13, 1999, accessed January 8, 2012 http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/poland_en.pdf.

Irregular Immigration

In line with its geographical position, the security of the border between Poland and its non-EU neighbours was of importance for the EU due to the threat of irregular immigration and cross-border crime. According to the multilateral readmission agreements signed between Poland and the Schengen countries in 1991, Poland was obliged to receive back irregular migrants entering the Schengen border via Poland.³⁴² These agreements also obliged Poland to conclude similar readmission agreements with its eastern neighbours by 1993.³⁴³

As mentioned above, irregular immigration is not considered an important problem at the national level as Poland is a transit country. However, the EU efforts concerning the issue of border management have been intensified with the EU's eastward enlargement. With the EU accession process, several measures were put across to limit unwanted migration from the eastern neighbours via Poland. As a pre-requisite for its accession to the EU, Poland had to abide by the requirements of the EU *acquis* related to immigration and asylum cooperation. The Member States, particularly Germany, were concerned about potential East-West migration after the EU's eastern enlargement.³⁴⁴ In addition to the EU level aid that Poland received before its accession, Germany also offered substantial bilateral assistance to Poland to improve its border management capacity.³⁴⁵ Germany particularly put great emphasis on the advancement of border security and management ahead of the accession.³⁴⁶ Through the European Commission's External Borders Fund under the 'Solidarity and Management of Migration Flows' programme, Poland also received 78.000 EUR for the period between 2007-2013 to contribute to the management of the border controls.³⁴⁷

³⁴² Heather Grabbe, "Stabilising the East while keeping out the Easterners" in *Externalities of Integration: The Wider Impact of The Developing European Asylum and Immigration Policy*, eds. Sandra Lavenex and Emek Uçarer, (Philadelphia: Lexington Books, 2003): 91-103.

³⁴³ Piotr Kazmierkiewicz, "The Polish Experience. In Controlling Illegal Migration-: Lessons for EU Candidates and Neighbours," (Warsaw: Institute of Public Affairs, 2007) available at: www.isp.org.pl/files/3938901520389034001173362029.pdf.

³⁴⁴ Grabbe, "Stabilizing the East while keeping out the Easterners," 91-103.

³⁴⁵ Heather Grabbe, "Sharp Edges of Europe: Extending Schengen Eastwards," *International Affairs* 76 no.3 (2000): 507.

³⁴⁶ Anna Kicingier, Agnieszka Weiner and Agatha Gorny, "Advance yet uneven: The Europeanization of Polish Immigration Policy" in *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union* eds. Thomas Faist and Andreas Ette (Basingstoke: Palgrave Macmillan, 2007): 185.

³⁴⁷ "External Borders Fund 2007-2013 –Poland (2009)," IP/09/108, accessed January 8, 2012

As one of the longest external borders of the EU belongs to Poland, the pressure on Poland concerning combating irregular immigration from its eastern neighbours has increased with the shift of the Schengen borders eastward in 2008. Among the WNIS, the cooperation with Ukraine has been highly significant due to the long common border. At the EU level, Poland has strongly emphasized ‘border management’ cooperation with the Ukraine.³⁴⁸ Poland has taken part in a number of Frontex operations to strengthen the eastern border of the EU.³⁴⁹

Visa Cooperation

The short term cross-border mobility between Poland and its eastern neighbours has been one of the main problems following the integration of Poland in the EU. The EU integration put the economic and social aspects of the connections between the border zones at risk.³⁵⁰ Irrespective of the legacy of visa-free travel between the post-Soviet countries, Poland was obliged to adjust the rules concerning the entry to the Polish territory to the EU regulations, including ceasing all former visa-free travel arrangements with its non-EU neighbours. During the preceding free-movement regime for the neighbouring countries, the economic undertakings (mainly undocumented) of the neighbouring countries’ citizens to a certain extent endured.³⁵¹ In January 1998, Poland started to reflect the necessary changes in line with the requirements of EU accession.³⁵² Poland was obliged to align its visa policy with the EU’s common visa policy. In October 2003, the previous visa-free border crossing regime terminated with Russia, Ukraine and Belarus.

The introduction of the strict EU border regime had an impact both at the economic as well as at the societal level. Concerning the economic dimension, the cross-border trade

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/108&format=HTML&aged=1&language=EN&guiLanguage=en>.

³⁴⁸ Interview with EU officials E, February 2011, Brussels.

³⁴⁹ Cooperation among the member states regarding combatting illegal immigration threats from eastern neighbours has been one of the main focus of Frontex since 2005. See

http://www.frontex.europa.eu/examples_of_accomplished_operati/go:flt/

³⁵⁰ Joerg Monar, “The area of freedom, security and justice after the 2004 enlargement,” *The International Spectator* 38 no.1 (2003): 33-50.

³⁵¹ Kicinger et al., “Advance yet uneven: The Europeanization of Polish Immigration Policy”, 181-200.

³⁵² Krystyna Iglicka, “Migration Movements from and into Poland in the light of East-West European Migration,” *International Migration* 39, 1 (2001): 7.

particularly in the case of Ukraine had been significant for both sides.³⁵³ The restrictions concerning the cross-border mobility that were introduced between Poland and Ukraine in the late 1990s paved the way for a considerable decline (around 30 percent) in the cross-border trade.³⁵⁴ Although the weight of the cross-border trade was relatively low at the national level, it was significant for the economically underdeveloped border regions.

Poland aimed at continuing its historical and social bounds with the eastern neighbours ensuring that there are no dividing lines between the EU and its European neighbours as a result of the EU accession process. New dividing lines would give the eastern neighbours an undesirable signal from the EU. Imposition of high-priced visas was particularly an issue of concern for Poland. Initially, Poland introduced short-term visas for the citizens of the neighbouring countries who wanted to travel for tourism purposes.³⁵⁵ Although these visas were handed out free of charge, the process was still considered a disturbance in comparison to the former visa-free travel regime.

Poland along with the other Visegrad countries negotiated the 'Local Border Traffic' agreement.³⁵⁶ The local border traffic was particularly significant concerning the cross-border economic and social relations for the border regions. This has paved the way for a special authorization to keep the existing 'local border traffic' after the accession of the central European countries to the EU. In line with the Commission's Local Border Traffic proposal³⁵⁷, the Member States are given permission to sign bilateral agreements with their non-EU neighbours.³⁵⁸ The Council's decision stated that these permits were introduced in the EU 'to ensure that the borders with its neighbours are not a barrier to

³⁵³ David Lane, "In or Out of Europe? What prospects for Ukraine?," *Perspectives on European Politics and Society* 8, no.4 (2007) : 495-504.

³⁵⁴ Grabbe, "The Sharp Edges of Europe: Extending Schengen Eastwards," 519-36.

³⁵⁵ Kicinger et al., "Advance yet uneven: The Europeanization of Polish Immigration Policy", 181-200.

³⁵⁶ European Commission, "Second Report on the implementation and functioning of the local border traffic regime set up by Regulation No 1931/2006," COM (2011) 47 final, February 2, 2011 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0047:EN:NOT>.

³⁵⁷ European Commission, "Proposal for a Council Regulation on the establishment of a regime of local border traffic at the external land borders of the Member States," COM (2003) 502 final, August 14, 2003.

³⁵⁸ The local border traffic permits are granted to the residents of the border regions (the residents who reside within 30 km or 50 km of the border, depending on the circumstances). These permits also adhere to the reciprocity principle between a member state and a third neighbouring country, with the permits being valid for residents of both sides.

trade, social and cultural interchange or regional cooperation' which was very dynamic among the countries of the post-Soviet area.³⁵⁹

Despite the limited flexibility offered to the border regions, the mobility aspects of migration cooperation with the neighbours have been one of the disputed issues concerning the EU policy towards eastern neighbours.³⁶⁰ Poland has been one of the main defenders of the abolition of visa requirement to enter the EU for the nationals of the immediate eastern neighbours.³⁶¹ The negotiations on readmission and visa facilitations were followed by a visa dialogue between the EU and Ukraine and Moldova without a clear prospect for how the visa liberalisations would be 'operationalised'. In line with its support to enhancing cross-border mobility, Poland (along with the other new Member States, particularly with Lithuania) has strongly pushed for the approval of the European Commission's proposal regarding moving to an 'operational' stage and assist the neighbouring countries to establish a visa free regime between the EU and the eastern neighbours.

Labour Immigration

As opposed to the other Member States that are analysed, Poland is not a traditional destination country for labour immigration. Nevertheless, Poland attracted short-term economic immigrants from the region following the end of the Cold War. Ahead of the introduction of the Schengen border regime regulations that abolished the free-border policy between Poland and its eastern neighbours, the nature of the movement from Eastern Europe to Poland was mainly for short-term with the aim of trade or short-term labour.³⁶² These cross-border movements were mainly of clandestine nature. Short-term seasonal labour migration from Ukraine to Poland or to other EU countries further west

³⁵⁹ Council of the European Union, "Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention", OJ L 405, December 31, 2006, accessed January 8, 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:405:0001:0022:EN:PDF>.

³⁶⁰ Interview with an EU official A, March 2009, Brussels.

³⁶¹ "Ukrainian, Polish foreign ministers discuss cooperation, visa-free travel" *PAP News Agency*, May 24, 2010 (retrieved from BBC Monitoring Europe-Political/BBC Worldwide Monitoring).

³⁶² Krystyna Iglicka, "Migration Movements from and into Poland in the light of East-West European Migration," *International Migration* 39, 1 (2001): 8.

was an important element of cross-border mobility. This was especially important for the communities living very close to the border on each side. The long-standing Polish liberal policy concerning immigration and mobility with respect to its eastern neighbours has not been significantly changed since its accession to the EU.

Asylum Cooperation

Since the early 1990s, Poland started to cooperate with the EU Member States regarding legislative and policy development in the area of asylum cooperation. Poland was declared as a ‘safe country’ for asylum seekers following its compliance with the Geneva Convention. Compared to the Western European member states analysed in this study, Poland was never subject to high levels of asylum applications. In 1993, it was agreed that the asylum seekers entering the German borders via Poland should be readmitted by Poland due to the increasing asylum pressures from the region.³⁶³

One of the objectives of the ENP is to establish a similar relationship between the EU and its eastern neighbours with respect to legislative development in the neighbouring countries as stressed in the ENP country progress reports regarding immigration and asylum cooperation. Poland was one of the Member States that expressed their reluctance concerning the externalisation of asylum duties in the EU. In 2004, the Polish Minister of Interior stated that ‘We oppose to establishing such centres outside the EU borders. The European Union and Poland constitute the area of freedom, security and solidarity. The asylum seekers need their rights to be protected, therefore we cannot expel them’.³⁶⁴ Despite the divergent opinions on the regional settlement programmes, a consensus was reached at the EU level following the European Commission’s proposal on pilot regional protection programmes.

³⁶³ Piotr Kazmierkiewicz, “*The Polish Experience. In Controlling Illegal Migration-: Lessons for EU Candidates and Neighbours*,” (Warsaw: Institute of Public Affairs, 2007) available at: www.isp.org.pl/files/3938901520389034001173362029.pdf.

³⁶⁴ Ministry of Interior of Poland, “We need to help the refugees,” October 12, 2004, accessed January 8, 2012 http://www.mswia.gov.pl/portal/en/1/89/We_need_to_help_the_refugees.html?search=439326.

Conclusion

The long-standing Polish liberal policy concerning migration and mobility with respect to its eastern neighbours has not been significantly changed since its accession to the EU. For Poland, as a member state located along the eastern border of the Schengen zone sharing the longest land borders of the EU with a third country, it is essential to ensure the security of the border and address this issue at the EU level. In line with this, Poland (along with the other new Member States in the region) argues that the EU should sufficiently assist the eastern neighbours to ensure that they develop the necessary mechanisms to control their own borders and meet the relevant criteria needed to have a more flexible cross-border arrangement with the EU.

4.5. Sweden

Immigration was not a politically salient issue in Sweden until the early 1990s. There was a tradition of consensus among the political parties both on the left and right regarding immigration policy.³⁶⁵ Migration became a political issue in Sweden from the early 1990s when a populist party (New Democracy) adopted a restrictive stance with respect to migration to Sweden.³⁶⁶ With the defeat of the traditionally strong Social Democrats, a centre-right coalition government was formed called the Alliance for Sweden after the 2006 elections.³⁶⁷ Following the process started by the Parliament in 2006 under the Social Democrats, the legislation concerning labour immigration was amended in December 2008, which aimed at facilitating labour market access for foreigners. A Swedish representative pointed at the fact that there was a consensus among the seven parties that were in parliament regarding the need for more flexible rules in the area of labour migration policy.³⁶⁸ However, the 2010 elections paved the way for the end of the consensus regarding pro-immigration policies among the parties,

³⁶⁵ Christoffer Green-Pedersen and Jesper Krogstrup, "Immigration as a political issue in Denmark and Sweden," *European Journal of Political Research* 47: (2008): 610–634.

³⁶⁶ Christoffer Green-Pedersen and Jesper Krogstrup, "Going different ways? Right-wing parties and the immigrant issue in Denmark and Sweden", in *Immigration and Integration Policy in Europe: Why Politics – and the Centre-Right Matter* ed. Tim Bale (Oxon: Routledge, 2009): 58.

³⁶⁷ The coalition was formed by four parties: the Conservative Party (Moderaterna), the Center Party, the Liberal Peoples Party and the Christian Democratic Party.

³⁶⁸ Åsa Carlander, Legal counsellor, Permanent Representation of Sweden to the European Union, 1 February 2011, Brussels.

with the success of a far-right party, Sweden Democrats, who won 20 seats in the Swedish parliament.³⁶⁹

Sweden put considerable emphasis on the development of the external dimension of the EU's immigration policy through striking a sound balance between legal immigration opportunities, development cooperation with third countries and fight against irregular immigration.³⁷⁰ The area of immigration and asylum has become an important dimension of the Swedish initiatives regarding the EU's eastern neighbourhood. It is considered that 'migration issues must be a distinct part of the ENP' underlining the need for further international cooperation.³⁷¹

Sweden prioritized the development of cooperation regarding capacity-building mechanisms in the area of immigration management between the EU and its neighbours. One of the main multilateral frameworks on the issue of immigration and asylum, the Soderkoping Process (SP), was launched by Sweden in 2001. The aim was to enhance the dialogue and cooperation particularly between the new EU member states and the WNIS regarding the immigration and asylum policy areas.³⁷² The cooperation included Belarus, Moldova, and Ukraine.³⁷³ The areas identified as 'common security' items between the stakeholders were 'migration, asylum policy skills, border surveillance and the strengthening of outer border controls'. The SP has become one of the main multilateral frameworks that bring together the EU Member States and the partner countries in the eastern neighbourhood contributing to the

³⁶⁹ Jonas Fredén, "Center-right wins Swedish election - but short of majority," September 23, 2010, accessed January 8, 2012

<http://www.sweden.se/eng/Home/Society/Government-politics/Reading/Center-right-wins-Swedish-election--but-short-of-majority/>.

³⁷⁰ Swedish Presidency of the EU, "Draft Multiannual programme for an area of Freedom, Security and Justice serving the citizen (The Stockholm Programme)," 14449/09, October 16, 2009, accessed January 8, 2012 <http://register.consilium.europa.eu/pdf/en/09/st14/st14449.en09.pdf>.

³⁷¹ Government Offices of Sweden, "Statement of government policy in the parliamentary debate on foreign affairs 15 February 2006," accessed January 9, 2012 <http://www.regeringen.se/sb/d/10275/a/70230>.

³⁷² See: The Soderkoping Process <http://soderkoping.org.ua/page2864.html>.

³⁷³ There is also a Secretariat based in Kiev that is responsible with the cooperation and the coordination between the EU and the WNIS.

immigration cooperation and dialogue in the region.³⁷⁴ Although there is not a formal connection between the SP and the EU policy, there is an on-going discussion regarding integration of the SP into the multilateral track of the Eastern Partnership.

The following section maps the policy positions of Sweden with respect to the four case study areas.

Irregular Immigration

The Swedish government confirms the need for EU level cooperation to fight with irregular immigration. The readmission negotiations between the EU and third countries were particularly supported by Sweden given that the issue was ‘a matter of common interest’.³⁷⁵ Sweden’s involvement in the region regarding irregular immigration is particularly linked to combating cross-border crime such as trafficking. Its development cooperation concerning Belarus (2007-2010) underlines cooperation particularly to fight human trafficking.³⁷⁶ Similar to Belarus, high levels of irregular immigration from Moldova are also underlined in the development cooperation between Sweden and Moldova (2007-2010).³⁷⁷ However, Sweden diverges from other member states that traditionally receive high levels of immigration on the issue of combating irregular immigration. Due to its rather liberal approach towards immigration, Sweden exhibits a more balanced approach at the national and EU level with respect to different aspects of immigration cooperation. A national representative from Sweden pointed at the fact that the EU focus has been on irregular migration and security issues. She has underlined that Sweden would prefer to discuss legal migration opportunities and mobility with the neighbours.³⁷⁸ Sweden also put emphasis on the balance between

³⁷⁴ “Recommendations from the Chisinau Conference - a step taken towards the integration of the Söderköping Process into the Eastern Partnership”, February 2, 2011, accessed January 8, 2012, <http://soderkoping.org.ua/page28901.html>.

³⁷⁵ Kerstin I. Eriksson, “Removal-enforcement of return decisions,” Paper prepared for the European Commission hearing on a community return policy on illegal residents, July 16, 2002, accessed January 8, 2012 http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0019_en.htm.

³⁷⁶ Government Offices of Sweden “Strategy for development cooperation with Belarus (2007-2010),” accessed January 8, 2012 <http://www.regeringen.se/sb/d/574/a/39761>.

³⁷⁷ Government Offices of Sweden, “Strategy for development cooperation with the Republic of Moldova (January 2007 – December 2010),” accessed January 8, 2012 <http://www.regeringen.se/sb/d/574/a/93988>.

³⁷⁸ Åsa Carlander, Legal counsellor, Permanent Representation of Sweden to the European Union, 1 February 2011, Brussels.

irregular immigration and asylum. In the course of the debates regarding the ‘Future Common European Asylum System’, Sweden underlined that the measures that were in place to combat irregular migration must not undermine the access to asylum at the EU’s external borders.³⁷⁹ The concern in relation to asylum was also stressed in the 2009 Work Programme of the Swedish Presidency.³⁸⁰

Visa Cooperation

As a Member State that has a liberal approach towards immigration and mobility issues, Sweden put emphasis on the need to increase legal migration opportunities for the eastern neighbours of the EU. In the aftermath of the Commission proposal on the Eastern Partnership in December 2009, one of the main issues that were debated among the Member States was the visa liberalisations commitments that would be put in the EU declaration.³⁸¹ A number of Member States stressed the conditionality with respect to the abolition of visa requirements for the partner countries. Along with Poland, Sweden advocated a liberal and optimistic approach to convey the signal that an offer was made by the EU to the partner countries regarding the facilitation of mobility. In the course of the Council debates, Sweden gave its support to moving to an ‘operational’ stage with the Action Plans adopted for Russia, Ukraine and Moldova in 2010. Sweden (along with Belgium) was faced with increasing numbers of asylum applications from the Western Balkans in the aftermath of the visa liberalisations for the region. Although the Western Balkans example paved the way for certain reservations for some Member States such as Belgium regarding granting visa liberalisations to the eastern neighbours, it did not cause a policy change in the Swedish context.³⁸²

³⁷⁹ Regeringskansliet, Points of view on the Green Paper on the Future Common European Asylum System, October 1, 2007, accessed January 8, 2012
http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0010_en.htm.

³⁸⁰ Government Offices of Sweden, “Work programme for the Swedish Presidency of the EU 1 July-31 December 2009,” June 23, 2009, accessed January 8, 2012
<http://www.regeringen.se/sb/d/11312/nocache/true/dictionary/true>.

³⁸¹ Interview with EU official A, March 2009, Brussels.

³⁸² Interview with EU Member State representative H, February 2011, Brussels.

Labour Immigration

Similar to the other immigrant receiving countries in Western Europe, Sweden adopted a liberal foreign labour policy from the aftermath of the Second World War until the early 1970s. Other Scandinavian countries in the region were the main source of foreign labour in Sweden. Besides its neighbours, Sweden also recruited foreign labour from the Mediterranean countries during this period. As opposed to Germany, the foreign workers were not recruited under a short-term macro level policy. The immigrant workers and their families were welcomed to reside in Sweden and were given secure legal status.³⁸³ In addition, the integration of immigrants to Sweden was a priority from the outset. By the end of the 1960s, efforts were made to ensure that immigrants were given rights similar to those of Swedish citizens. The foreign workers who were recruited in the course of this period also enjoyed considerably high salaries equivalent to or more than those of domestic workers. In the early 1970s, the oil crises reduced the need for foreign workers. The liberal policy of Sweden was mainly contested by the trade unions that had a considerable power over the management of the labour market policies as well.³⁸⁴ By the early 1970s, the Social Democrats who were in power introduced restrictions on further recruitment of foreign labour. After the 1970s, the political parties on the right by and large had a consensus regarding the liberalization of the labour migration policy. However, this was opposed by the Social Democrats.

Sweden supports increasing legal immigration opportunities for the WNIS region. Increased legal channels are also seen as a tool to fight with irregular immigration from the region. Concerning the policy adopted in 2008 at the domestic level in Sweden on labour migration, the main policy change with respect to the external dimension of immigration was the emphasis that the new coalition government put on the facilitation of legal migration from outside of the EU.³⁸⁵ Despite the pull factors regarding immigration such as liberal policies and geographical proximity, it should be noted that

³⁸³ Tomas Hammar, "Sweden" in *European Immigration Policy-A Comparative Study* ed. Hammar (Cambridge: Cambridge University Press, 1985): 30.

³⁸⁴ Christoffer Green-Pedersen and Jesper Krogstrup, "Going different ways? Right-wing parties and the immigrant issue in Denmark and Sweden", in *Immigration and Integration Policy in Europe: Why Politics – and the Centre-Right Matter* ed. Tim Bale (Oxon: Routledge, 2009): 56.

³⁸⁵ European Migration Network – Annual Report 2006 – Sweden, available at:

<http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=53ADAD772F69B55569C34C517C8FC2F4?entryTitle=05>. Annual Policy Report 2006.

the level of immigration from the post-Soviet republics to Sweden has been limited compared to immigration from the region to other destinations in Europe such as Germany and the UK.³⁸⁶

The Swedish Ministry of Justice, that is responsible with migration policy in Sweden, underlined in a recent report that Sweden prefers a more integrated EU policy regarding labour migration. The report stressed on support for the establishment of EU level common rules concerning a ‘needs-based system’ with respect to labour migration.³⁸⁷ The facilitation of mobility through circular migration at the bilateral level with the eastern neighbours is aimed (in line with the commitments that were made with the European Pact on Immigration and Asylum adopted in 2008).³⁸⁸ However, the Swedish approach to labour immigration diverges considerably from the circular immigration idea put forward by France and Germany in 2006 and later developed by the European Commission. After the Member States’ disapproval of the Commission’s ambitious policy in 2001 on a general policy, the Commission has come up with a proposal that has a narrower focus. In line with the Swedish national policy that offers a general framework, Sweden does not fully support the European Commission’s sectoral approach (such as the development of different frameworks for highly qualified or seasonal workers) to the labour migration policy area.³⁸⁹ Instead, Sweden has negotiated a labour migration policy at the national level which is not sectoral. Different than the Commission’s approach, the Swedish policy aims to encourage labour immigration at all skill levels.

Giving its support to increased legal migration opportunities for third countries, Sweden takes part in the pilot EU Mobility Partnership agreement reached between the EU and Moldova. The Swedish Strategy for Development in Moldova (2007-10) also underlines the priority of Sweden to assist Moldova with respect to high levels of migration. The

³⁸⁶ Jenny Olofsson and Gunnar Malmberg, “When Will the Russians Come? On Post-Soviet Immigration and Integration in Sweden,” *International Migration-IOM* 49, no. 4 (2011): 93-117.

³⁸⁷ Swedish Ministry of Justice (2010) Migration Policy- Fact Sheet, (Stockholm, 2010).

³⁸⁸ European Migration Network – Annual Report (2009), available at:

<http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=53ADAD772F69B55569C34C517C8FC2F4?entryTitle=02. Annual Policy Report 2009>

³⁸⁹ Åsa Carlander, Legal counsellor, Permanent Representation of Sweden to the European Union, 1 February 2011, Brussels.

main emphasis is on addressing root causes of migration. At the national level, a project, titled “Strengthening Moldova’s capacity to manage labour and return migration within the framework of the mobility partnership with the EU”, is run by Sweden. The aim is to encourage the voluntary return of the Moldavian nationals residing in the EU.³⁹⁰

Asylum Cooperation

Sweden has traditionally had one of the most ‘generous’ asylum policies among the EU member states. The approval rates for asylum applications were approximately 100 percent until the mid-1980s.³⁹¹ Since the 1980s, the political salience of the asylum topic has increased in Sweden due to the considerable rise in applications. The sudden increase in the number of applications in the aftermath of the Cold War paved the way for the reconsideration of the liberality of the Sweden’s asylum policy. The Social Democrat government introduced restrictions concerning granting the right to asylum to certain categories of asylum seekers in 1989. The increasing asylum applications broke the former consensus among the two party blocs, the Socialist and Conservative governments.

In line with the increasing problems associated with the management of the asylum system, the main priorities for Sweden concerning the EU level policy on immigration have been burden sharing and harmonization particularly with respect to asylum and humanitarian dimension.³⁹² The government’s statement on foreign policy in 2003 highlighted the need for the minimum conditions that the EU member states would agree on were underlined particularly due to generous policy of Sweden with respect to refugee policy compared to other EU member states.³⁹³ In line with the existing balances between the member states, Sweden puts considerable emphasis on ‘a

³⁹⁰ European Migration Network – Annual Report (2009), available at:

<http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=53ADAD772F69B55569C34C517C8FC2F4?entryTitle=02>. Annual Policy Report 2009

³⁹¹ Elisabeth Abiri, “The Changing Praxis of ‘Generosity’: Swedish Refugee Policy during the 1990s,” *Journal of Refugee Studies* 13, no.1 (2000): 13.

³⁹² Government offices of Sweden, “Statement of government policy in the parliamentary debate on foreign affairs,” (Unofficial Translation), February 9, 2000.

³⁹³ Government offices of Sweden, “Statement of government policy in the parliamentary debate on foreign affairs,” (Unofficial Translation), February 12, 2003.

common EU refugee policy based on solidarity' among the EU member states.³⁹⁴ The issue of equal offers from each member state within a common EU asylum system is prioritised in Sweden.³⁹⁵

Cooperation with the eastern neighbours concerning refugee and asylum policies is also prioritised by Sweden. The compatibility of the partner countries in the eastern neighbourhood with the European standards concerning asylum is highly significant as underlined in the SP cooperation with the WNIS. The ENP Progress Reports for the eastern neighbours also underline both legal developments and problems in the partner countries with respect to the humanitarian dimension of immigration. Regarding the external dimension of asylum policy, Sweden did not support the suggestion of the UK regarding 'off-shore processing' of asylum applications ahead of the Thessaloniki Summit in 2003.³⁹⁶ Despite the initial concerns, the European Commission's proposal regarding the Regional Protection Programmes in cooperation with the eastern neighbours is agreed at the EU level and integrated in the resettlement cooperation through finding a consensus on the issue.³⁹⁷

Conclusion

Similar to the policy priorities of Poland, Sweden also emphasizes the need for enhanced cross border mobility between the EU and eastern neighbours. In line with this, visa liberalisation is central to Swedish policy towards the region. In addition to short-term mobility, Sweden also prioritizes opening up further legal channels for the citizens of the WNIS region. It is argued that irregular migration could be combated through introducing further legal channels, both concerning visa facilitations and economic immigration, for the region.

³⁹⁴ Government offices of Sweden, "Statement of Government Policy in the Parliamentary Debate on Foreign Affairs," (Unofficial Translation) February 9, 2005.

³⁹⁵ Swedish Ministry of Justice (2010) Migration Policy- Fact Sheet

³⁹⁶ Alexander Betts, "The International Relations of the 'New' Extraterritorial Approaches to Refugee Protection: Explaining the Policy Initiatives of the UK Government and UNHCR," *Refuge: Canada's Periodical on Refugees* 22, no (1) (2004): 59.

³⁹⁷ See: The Swedish Migration Board-the EU and Migration
http://www.migrationsverket.se/info/217_en.html

4.6. Chapter Conclusions

The comparative analysis in this chapter presents the main policy positions of the Member States on the issue of immigration cooperation with the eastern neighbours (See Table 3). The assessment of their preferences on the four sub-areas of immigration cooperation shows that the main cleavage among the Member States could be identified as the degree to which security or mobility oriented policies are supported. Among the case study areas, irregular immigration and asylum have been related to security dimension of immigration management in the EU decision-making context. Based on this differentiation, it is argued that there is a high consensus among the Member States with respect to security-oriented policies. All the Member States that are analysed in the Chapter agree on the fact that irregular immigration is an important part of the EU cooperation with third countries. Historically, the early internal cooperation among the Member States focused on combatting irregular immigration as well. In line with, there is a relatively longer tradition of cooperation in the area of fight against irregular migration among the EU Member States. As the external extension of the intra-EU partnership, the cooperation with the neighbouring countries in the area of migration focuses on irregular migration dimension. It is considered that there is a need to cooperate with the neighbours due to economic or security related repercussions of irregular migration to the EU. Moreover, it is a sector that most likely involves cross-border crimes and human (potentially asylum seekers) exploitations.

On the other hand, visa cooperation and labour immigration are the policy areas that are linked to the liberalisation of cross-border mobility. The policies that are linked to further liberalisation of cross-border mobility bring about polarised preferences among the Member States. As shown above, the Member States considerably diverge regarding the degree to which they support visa liberalisations and opening up labour immigration channels for the third country citizens from the region.

Table 3. Member States' Policy Preferences

Policy areas	Preferences of the Member States
Irregular Migration	High Consensus
Visa	Low Consensus
Labour migration	Low Consensus
Asylum cooperation	High Consensus

As outlined above, France, Germany and the United Kingdom adopted security-oriented approaches emphasizing the concerns related to future migratory pressures from the region. As traditional migrant receiving countries, these countries consider themselves potential destinations for the migrants coming from the WNIS. As mentioned above, the UK opted in a substantial amount of EU legislation concerning the irregular migration as well. A security-oriented approach is shared by most of the EU member states which have been traditionally subject to high levels of immigration such as Austria, Belgium and Netherlands. In line with their approach, these actors are reluctant to adopt policies that would ease cross-border travel.

The actors that give support to further liberalisation of movement for the citizens of the eastern neighbours, such as Poland and the rest of the new member states that entered the EU in 2004 and 2007, have historically been either source or transit countries of immigration. Similar to the new member states from the east, Sweden has been in favour of further liberalizing mobility for the citizens of eastern neighbours parallel to its long-standing liberal approach with respect to migration.

The comparative picture depicts that there is a tendency for economically and politically strong member states (i.e. France, Germany, the United Kingdom) to prioritize cooperation against irregular migration and in relation to the asylum pressures to the EU in partnership with the neighbours.³⁹⁸ Despite the reluctance of the 'strong' member states to further enhance mobility for the eastern neighbours, there has been progress regarding security and liberty oriented policies towards the region since 2006.³⁹⁹

³⁹⁸ See Appendix 1 for a comparative table on asylum levels.

³⁹⁹ The policy outcomes are discussed in further detail in Chapter 6.

Although the policy preferences and concerns of the strong member states are compelling in an area like immigration (i.e. high politics), the policy outcomes rise above the lowest common denominator.

As opposed to the state-centric approaches that put forward the ‘lowest common denominator’ argument, the institutionalist approaches argue that institutional actors and dynamics act as intervening variables. Their impact on the decision-making process could constrain intergovernmental bargaining among member states. The following Chapter analyses the ways in which the EU’s institutional framework constrains the intergovernmental bargaining among the EU Member States.

CHAPTER 5: The Influence of EU's Institutional Framework

Introduction

This chapter first outlines the legal basis and procedures of decision-making in the EU. The aim is to analyse the extent to which legal and formal constraints reinforce or constrain intergovernmental decision-making processes. As opposed to the ‘bargaining approach’, the extension of the Community method to areas such as immigration and asylum policies constitutes constraints according to institutional approaches. On the other hand, the legal and constitutional rights of the member states are taken into account. Member states could limit each other or EU institutions based on the legal framework. Parallel to this, the decision-making procedures could enhance the role of EU institutions. The institutions could also constrain the behaviour of each other or national actors at different stages of EU decision-making process. A considerable amount of EU legislation in the area of justice and home affairs is on the intra-EU integration and harmonisation. This chapter deals mainly with the external dimension of the policy areas. The internal dimension is presented to the degree that it is relevant for the external aspects of cooperation. Secondly, the Chapter presents the main institutional actors in the area of the external dimension of migration. This section deals with the institutional dynamics of policy making. The analysis focuses on: the Council of the EU, the European Council, the European Commission, and the European Parliament as the main decision-making institutions of the EU.

5.1. The legal basis of the EU Action concerning the external dimension of migration

5.1.1. The Maastricht Treaty: Intergovernmental cooperation under the third pillar

In 1992, the member states signed the Maastricht Treaty which established a legal basis for EU-level cooperation in the field of justice and home affairs under Title VI TEU. The Maastricht Treaty defined the field of justice and home affairs as a ‘common interest’ and asserted the shared aim of the member states to develop ‘close cooperation

on JHA affairs'.⁴⁰⁰ Among the spheres of EU competence regarding migration under Title VI were asylum, borders, immigration and the policies regarding documented and undocumented third country nationals.⁴⁰¹ The legal basis was placed under the intergovernmental third pillar. As emphasised in Article K.3 (1) Title VI TEU, the member states agreed to enhance cooperation and coordination at the EU level without communitarisation during the Maastricht Treaty negotiations.⁴⁰²

Under the Maastricht legal framework, the member states had a very strong hand in decision-making due to the unanimity requirement. As stated in Article K.4 (3) TEU, the intergovernmental legal basis allowed the Council to act unanimously to adopt common positions and actions, promote cooperation and draw conventions. The third pillar structure did not give substantial roles to the European Commission and the European Parliament in decision-making due to the reluctance of the member states in ceding sovereignty in the area of justice and home affairs. As indicated in Article K.3 (2) TEU, the Commission shared the competence to initiate legislative proposals with the member states regarding asylum, borders, immigration and third country nationals. Under the restricted intergovernmental legal basis, the EP's position was not binding on the member states in the course of decision-making process.⁴⁰³

The legislative developments in the justice and home affairs were limited under the intergovernmental framework of the Maastricht Treaty. This was particularly due to the unanimity requirement and intricate decision-making for the adoption of measures which prolonged decision-making process and hence discouraged the member states

⁴⁰⁰ See: The Treaty on European Union (TEU), OJ C 191, July 29, 1992, accessed January 2, 2012. <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>.

⁴⁰¹ Several issue areas concerning migration have been included under Article K.1 VI TEU including '(i) asylum policy; (ii) rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon; (iii) immigration policy and policy regarding nationals of third countries: (a) conditions of entry and movement by nationals of third countries on the territory of Member States; (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment; (c) combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States.' The Member States have committed to coordinate their policies and cooperate regarding migration in the view of the increasing interdependence.

⁴⁰² Article K.7 TEU also enabled cooperation among two or more member states.

⁴⁰³ According to Article K.6 TEU, the Presidency and the Commission should inform and consult the European Parliament.

from cooperation within the narrow Treaty competence.⁴⁰⁴ The limitations of the Treaty paved the way for increased dialogue and interchange among the member states outside of the EU framework.⁴⁰⁵ The member states adopted joint positions predominantly to control migratory pressures to the EU. Among these measures were the harmonisation of the list of countries whose nationals require a visa to enter the EU borders and the transfer of responsibility to third parties such as ‘carrier sanctions’ that make the airline companies liable if they take undocumented migrants on board.⁴⁰⁶ Despite its limited scope and the problems related to its effectiveness, the EU level cooperation in the area of justice and home affairs under the Maastricht Treaty’s intergovernmental further encouraged the Member States to cooperate in the area of justice and home affair.⁴⁰⁷ In Amsterdam, the member states reached a consensus to communitarise the policies that were related to migration.

5.1.2. Amsterdam Treaty: Communitarisation in the policy area

With the ratification of the Amsterdam Treaty in 1999, the member states approved the transfer of the items related to immigration and asylum from the intergovernmental domain to the European Community. The Council adopted Articles 61-69 of Title IV of the TEC on ‘Visa, asylum, immigration and other policies relate to free movement of persons’.⁴⁰⁸ It should be noted that the EU level communitarisation of this area was not a result of a consensus regarding making further commitments in terms of cooperation in migration field. The integration at the EU level regarding migration policy area was related to the increasing interdependence among the member states in line with ‘free movement of persons’.⁴⁰⁹

⁴⁰⁴ Virginie Guiraudon, “European Integration and Migration Policy: Vertical Policy Making as Venue Shopping,” *Journal of Common Market Studies* 38, no.2 (2000): 256-257.

⁴⁰⁵ Ibid.

⁴⁰⁶ Sarah Collinson, “Visa Requirements, Carrier Sanctions, “Safe Third Countries’ and ‘Readmission’: The Development of an Asylum ‘Buffer Zone’ in Europe,” *Transactions of the Institute of British Geographers*, New Series 21, no. 1 (1996): 76-90.

⁴⁰⁷ Joerg Monar, “Justice and home affairs after Amsterdam: the treaty reforms and the challenge of their implementation,” in *The European Union after the Treaty of Amsterdam*, eds. Jörg Monar and Wolfgang Wessels (London: Continuum, 2000): 267-295.

⁴⁰⁸ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and related acts, Official Journal C 340, 10 November 1997
<http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>.

⁴⁰⁹ Monar, “Justice and home affairs after Amsterdam: the treaty reforms and the challenge of their implementation,” 267-295.

The Amsterdam Treaty moved a large amount of issues into the Community pillar with respect to the justice and home affairs field including ‘controls on the external borders, asylum, immigration and judicial cooperation on civil matters’ to establish a more comprehensive management of these issues at the EU level.⁴¹⁰ Due to the sensitivity of the policy area, the member states agreed on a transition period to fulfil the commitments that were made in Amsterdam. They committed to change the decision-making procedures with respect to these areas moving from unanimity in the Council to QMV and also to grant co-decision powers to the European Parliament.

After the ratification of the Amsterdam Treaty, a special Council meeting was organized dealing exclusively with the issues of justice and home affairs in Tampere in October 1999.⁴¹¹ The Tampere European Council was one of the rare occasions when a European Council meeting was devoted to a single issue. The member states made a declaration to start working towards ‘a common EU migration policy’ with a multi-annual scheme in Tampere. The European Council conclusions put forward firm targets and deadlines for the development of EU level legislations directed towards ‘the creation of an area of justice, liberty and security’.⁴¹² The pace of the legislative developments with respect to immigration and asylum were slow within the first one and a half years of the Tampere European Council.⁴¹³ Despite a number of Commission proposals that were put through immediately after the Tampere Council meeting, the member states were reluctant to agree on the adoption of further legislative measures until 2001. Signed in February 2001, the Nice Treaty drew attention to the commitments that were made with the Amsterdam Treaty in relation to changing the decision-making procedures in the area of migration from unanimity to qualified majority voting in the Council and extending co-decision competences to the European Parliament by May

⁴¹⁰ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and related acts, Official Journal C 340, 10 November 1997 <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>.

⁴¹¹ Council of the European Union, Presidency Conclusions Tampere European Council, 15-16 October 1999, accessed January 8, 2012 http://www.europarl.europa.eu/summits/tam_en.htm.

⁴¹² Ibid.

⁴¹³ Steve Peers, “Key Developments on Migration in the European Union,” *European Journal of Migration and Law* 3 (2001): 231-55.

2004.⁴¹⁴ With the entry into force of the Nice Treaty in February 2003, the decision-making procedures were changed from unanimity to qualified majority voting in the Council for a number of areas related to migration that were covered under Title IV TEC. This change did not affect some areas including ‘conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion’.

In the first half of 2004, the EU Presidency which was held by the Netherlands launched a debate about the upcoming deadline for changing the decision-making procedures for the migration policy area. In June 2004, the European Commission presented its Communication on the evaluation of the Tampere Conclusions. The Communication pointed at the problems in the course of policy making process due to the continuing dominance of intergovernmental decision making.⁴¹⁵ The Commission criticized the member states for prioritising the national issues rather than the common EU level objectives. This criticism was particularly relevant in the areas that the member states could also put forward proposals along with the Commission. It was clear from the Commission’s evaluation of the progress that was made in the course of the first multi-annual programme that the member states were reluctant to give up on their competences including the veto power.

In November 2004, the European Council approved the Hague Programme, the second multi-annual scheme regarding the course of action in the area of freedom, justice and security for the EU, replacing the Tampere Programme of 1999.⁴¹⁶ In 2005, the Commission presented the Action for the Hague Programme putting forward the following primary targets in the field to be realized within five years (2005-2010): ensuring fundamental rights and citizenship; enhancing and complementing member states’ capabilities to fight against terrorism; developing an EU level migration policy

⁴¹⁴ Declaration number 5 on Article 67 of the Treaty establishing the European Community, Treaty of Nice, OJ 2001 C 80, March 10, 2001, accessed January 8, 2012
http://eur-lex.europa.eu/en/treaties/dat/12001C/htm/C_2001080EN.000101.html.

⁴¹⁵ European Commission, “Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations,” COM (2004) 401 final, June 2, 2004.

⁴¹⁶ Council of the European Union, “Presidency Conclusions, the Hague Programme: Strengthening Freedom, Security and Justice in the European Union” Annex I, (14292/1/04 REV 1 11), November 4-5, 2004.

and managing migration, integrating external border management and visa policies; establishment of a common asylum area; adopting measures on integration to maximise benefit from migration for the EU society and economy; management of privacy and security in sharing information; fight against organized crime; ensure an area of European area of justice; and enhancement of shared responsibility and solidarity among the EU member states with respect to meeting the objectives of Freedom, Security and Justice.⁴¹⁷

The Hague Programme reflected the increasing security-oriented approach in the EU regarding the issues related to the AFSJ.⁴¹⁸ The emphasis that was put on the ‘shared commitment to freedom based on human rights, democratic institutions and the rule of law’ with the Tampere Programme was lessened. The Hague Programme stated that it responded to ‘a central concern of the peoples of the States brought together in the Union’ diverging from the Tampere Programme.⁴¹⁹ Instead of furthering EU integration in the areas concerning justice and home affairs, the Hague Programme was subject to criticism with respect to impeding the creation of ‘an area of freedom, security and justice’.⁴²⁰ The third multi-annual programme (2009-2014), the Stockholm Programme, was approved by the European Council in 2009.⁴²¹ The Programme has incorporated a detailed external dimension to the justice and home affairs policy area which has shown the increasing importance for the Member States.

Before delving into the each case study area, it should be noted that most of the decisions and instruments related to migration cooperation with Ukraine and Moldova were adopted under the Amsterdam Treaty legal basis and procedures. In line with this, the following section mainly focuses on the Amsterdam Treaty. Entered into force in December 2009, the Lisbon Treaty has led to certain significant changes regarding the

⁴¹⁷ European Commission, “The Hague Programme: Ten priorities for the next five years: The Partnership for European renewal in the field of Freedom, Security and Justice,” COM (2005) 184 final, June 10, 2005.

⁴¹⁸ Thierry Balzacq and Sergio Carrera, “The Hague Programme: The Long Road to Freedom, Security and Justice,” in *Security vs Freedom*, eds. Thierry Balzacq and Sergio Carrera (Aldershot: Ashgate, 2006): 5.

⁴¹⁹ Ibid.

⁴²⁰ Elspeth Guild and Sergio Carrera, “The Hague Programme & the EU’s agenda on ‘Freedom, Security and Justice: Delivering results for Europe’s citizens?,” *CEPS*, July 2006.

⁴²¹ European Council, “The Stockholm Programme, an Open and Secure Europe Serving and Protecting Citizens” (2010/C 115/01), May 4, 2010.

legal basis and decision making procedures in the area of external dimension of migration. After presenting the legal basis and the procedures under the pre-Lisbon rules, the following section also explain the changes that are introduced after the Lisbon Treaty.

5.1.2.1. Irregular Migration

As shown in Chapter 4 on the member states' policy preferences regarding the four case studies, the member states have found relatively easier to agree on a common position in the area of irregular migration due to their shared interest in reducing irregular migration to the EU. Among the policy tools that are available in the area of irregular migration, conclusion of 'readmission agreements'⁴²² has been one of the primary measures for the member states to cooperate with each other and with third countries.⁴²³ These agreements have helped the member states smooth the progress of returning undocumented immigrants to either countries of origin or transit.⁴²⁴

The cooperation among the member states regarding streamlining their efforts in order to return undocumented immigrants began under the intergovernmental legal basis which was created with Article VI of the Maastricht Treaty. Under the intergovernmental Title VI of the Maastricht Treaty, the member states took certain steps to coordinate their actions regarding concluding readmission agreements with third countries. In 1994, they agreed on a template to be used at bilateral or multilateral readmission agreements with third countries.⁴²⁵ In March 1995, an agreement was reached in the Council regarding inserting repatriation clauses to the 'mixed agreements' with third countries which require the consent of both the member states

⁴²² EU Readmission Agreements are agreements between the EU and third countries with respect to undocumented migrants. The partner countries agree to receive their undocumented nationals residing in the EU, undocumented migrants who are not their nationals (including stateless persons) if it is proven that they entered the EU transiting through their territory.

⁴²³ Annabelle Roig and Thomas Huddleston, "EC Readmission Agreements: A Re-evaluation of the Political Impasse," *European Journal of Migration and Law* 9 (2007): 373.

⁴²⁴ Ibid.

⁴²⁵ European Commission, "Council Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country, OJ C 274, September 19, 1996, accessed January 8, 2012
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996Y0919\(07\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996Y0919(07):EN:HTML).

and the European Community.⁴²⁶ These agreements proved the increasing integration of the European Community into the management of readmission cooperation with third countries.

With the ratification of the Amsterdam Treaty, the European Community was granted with the competence to adopt measures in the area of irregular immigration and return of undocumented immigrants. Article 63(3) (b) under Title IV of the TEC introduced the call for the development of measures concerning ‘illegal immigration and illegal residence, including repatriation of illegal residents’ providing a legal basis for readmission agreements between the EC and third countries.⁴²⁷ With the legal basis, the European Community was given the competence to conclude readmission agreements with third countries on behalf of the EU.⁴²⁸

Decision-making Procedures:

After the end of the five-year transition period following the ratification of the Amsterdam Treaty, the Commission acquired exclusive competence to make proposals concerning the issues related to irregular migration identified under Article 63(3)(b) TEC. In line with the legal commitments that were made with the Amsterdam Treaty regarding the decision-making procedures, the Hague Programme (the second multi-annual programme) gave the EU Institutions the political mandate to transfer the decision making procedures on the issue of irregular migration measures from unanimity requirement to QMV in the Council. The Hague Programme also

⁴²⁶ See Readmission Agreements Council of the European Union (1995), doc. 12509/95, Council of the European Union (1996), doc 4272/96. Also see: Council of the European Union (1999) Council document 6098/99, 17 February (1999), Summaries of EU Legislations, Europa, accessed January 8, 2012 http://europa.eu/legislation_summaries/other/133105_en.htm.

⁴²⁷ Article 63 TEC also states that the instruments that are approved in the Council under its third paragraph ‘shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with the Treaty and with international agreements.’ In the case of 63(3)(b), the Member States could conclude readmission agreements with third countries at the national level as well. However, they cannot simultaneously negotiate with a third country that the EC is negotiating in line with Article 2(2) of the TFEU Bilateral readmission agreements concluded at the national level are usually less public compared to the EU level agreements. Despite the European Commission’s demands to increase transparency regarding bilateral readmission agreements of the member states, the member states traditionally do not reveal these agreements.

⁴²⁸ Article 218 TEC (formerly Article 210 of Rome Treaty) has given the EC legal personality to conclude international agreements with third parties on behalf of the EU. With Article 46 A TFEU, the member states have approved the legal personality of the European Union which has replaced the European Community in the Treaties.

strengthened the competences of the EP granting it with co-decision powers regarding irregular migration.⁴²⁹

Under the Amsterdam Treaty procedures, Community readmission agreements were concluded based on Article 300 (1) TEC which dealt with the conclusion of the international agreements that the EC acquired competences. According to Article 300 (1) TEC, the Commission had the exclusive right to make recommendations regarding concluding international agreements between the EC and third countries. Commission proposals regarding readmission agreements had to be approved by the Council acting by a qualified majority. After the approval of a proposal by the Council, the European Commission was responsible with negotiation process with third countries. Although the Commission had a considerable role being in charge of negotiation process on behalf of the EU, it was supposed to be in close contact with relevant Council working groups.

As discussed in the Chapter on the Member States' policy preferences, it is relatively easier for the Member States to reach a common position in the area of irregular migration. Readmission agreements predominantly facilitate the removal of undocumented migrants residing in the EU. The Council had the competence to reach a final decision regarding concluding a readmission agreement with a third country, following Commission led negotiations, based on qualified majority after consulting the European Parliament. Given that its policy position is not legally binding under the consultation procedure, the EP did not have strong influence in the course of readmission agreement negotiations with third countries under the pre-Lisbon procedures.

Post-Lisbon

With the entry into force of the Lisbon Treaty in December 2009, the competences of the EU to conclude international agreements with third countries on managing returning irregular migrants to their countries of origin or transit have become explicit. Although

⁴²⁹ Council of the European Union, "The Hague Programme: Strengthening Freedom, Security and Justice in the EU," 2005/C/01. (OJ C53/1) March 3, 2005.

the EU has concluded several readmission agreements based on the Amsterdam Treaty basis, there was not a direct reference to readmission agreements with third countries. Due to the lack of a clear mention, signing EC readmission agreements with third countries was identified as ‘implied’ competence of the Community.⁴³⁰ Article 79 (3) TFEU (replacing Article 63(3) TEC with the ratification of the Lisbon Treaty) has explicitly referred to signing EU level readmission agreements stating that the EU could ‘conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.’.

In terms of the changes regarding decision-making process, the EP’s competences have been amended with respect to readmission agreements. Although the European Parliament lacked strong influence under the pre-Lisbon set-up in relation to EU level readmission agreements, its influence has been substantially strengthened with the Lisbon Treaty. In line with Articles 79 (which incorporated the TEC 63(3)) and 218 (6)(a) (former Article 300 (3) TEC) of the TFEU, the consent of the EP has become required for the conclusion of readmission agreements. Under the consent procedure, the Council has a legal obligation to take into account the position of the EP in relation to concluding readmission agreements with third countries. As the negotiations for Ukraine and Moldova were concluded based on the Amsterdam Treaty procedures, the position of the EP was not binding for the Council.

5.1.2.2. Visa policy

In 1985, the Schengen Convention paved the way for the abolition of the internal borders among the EU member states. Although the main purpose behind the Schengen agreement was to strengthen the functioning of the Single European Act by eliminating the internal borders, one of the outcomes was the need for a common visa regime among the participating states. Among the case study areas of this thesis, visa policy is the most harmonised policy area. Within the Schengen system (which was initially

⁴³⁰ The Tampere European Council Conclusions, adopted in October 1999, confirms this implied competence and states that the Community is granted with powers regarding readmission with the ratification of the Amsterdam Treaty.

negotiated outside of the EU Treaty framework in an intergovernmental setting), the participating states agreed to harmonise short-stay visas to cross the borders of the Schengen zone. Due to the salience of the policy area for the member states, the EU harmonization in the area of visa policy was restricted to short-stay visas.⁴³¹ The member states were reluctant to transfer their competences over long-term visas and residence permits to the EU level.⁴³² Article 100c gave the European Community the competence regarding visas with the entry into force of the Maastricht Treaty in 1993.

With the ratification of the Amsterdam Treaty in 1999, the Schengen Acquis was integrated into the EU's legal framework.⁴³³ Referring to the adoption of measures in relation to 'rules on visas for intended stays of no more than three months', Article 62 (2)(b) of the TEC created an EU level legal basis with respect to short-stay visas. The member states retained their competence regarding negotiating or concluding agreements with third countries. The legal basis of the EU measures regarding visa domain was only applicable to short-term Schengen visas. The member states that were opted out of the Schengen acquis (i.e. Denmark, Ireland and the United Kingdom) were excluded in line with the Schengen procedures.

Decision-Making Procedure

Based on Article 100c (1) EC introduced with the Maastricht Treaty, the Council had the competence to determine the list of countries whose citizens need a visa to enter the Schengen border voting unanimously on a Commission proposal. As put in Article 100c (3), the voting requirement was changed from unanimity to qualified majority voting by January 1996. The Council had to consult the EP before reaching a decision but the EP's position was not legally binding.

⁴³¹ Article 62 (2) (b) TEC has given the EC the competence to adopt measures in relation to 'visas for intended stays of no more than three months'.

⁴³² The long-term visas and residence permits are dealt under Article 63(3) TEC. Article 63 underlines that the five-year transition period does not apply to this item.

⁴³³ See The Schengen Area and Cooperation, Summaries of EU Legislations, Europa, accessed January 8, 2012

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_migration/l33020_en.htm.

In 2001, the Member States adopted the Regulation on the list of countries that are exempted or required to obtain a visa.⁴³⁴ The determination of visa requirements for the nationals of a third country has a strong technical dimension in line with the calculation of the irregular migration threat and border security. However, there is an indisputable external relations dimension both at the national and EU level. As indicated in the 2001 Regulation on visa requirements, the external relations of the EU with a third country and the repercussions of the decision on the regional coherence are also important. In line with this, varied regional preferences of the EU Member States are highly important. The Member States that have close relations with the eastern neighbours, such as Poland, advocate visa-free travel for the eastern neighbours as Poland had to drop its visa-free national policy in line with the EU accession requirements. On the other hand, Spain could have particular preferences regarding the EU visa policy towards Latin American countries. Despite the likelihood of disagreements among the Member States and the hardship of reaching a common list of third countries, the EU has harmonised the visa lists since 1996.⁴³⁵ In line with this, the move from unanimity principle to qualified majority rule in the Council abolished the veto power of an individual member state with respect to the decisions on the visa requirements for the third countries. Although the QMV procedure in the Council restricted the impact of the Member States' individual policy preferences, the Council was the sole legislator and was not required to take into account the position of the EP regarding the determination of visa lists.

In relation to changing the 2001 Regulation on the list of the nationalities that are subject to visa requirement, the following procedure was relevant under the Amsterdam Treaty.⁴³⁶ Article 67 TEC stated that the proposals on the measures related to determining visa requirements or exemptions for third country nationals should be made solely by the Commission to the Council and the European Parliament. The decisions

⁴³⁴ Council of the European Union, "Council Regulation No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement" OJ L 81/1, March 21, 2001, accessed January 8, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>.

⁴³⁵ Steve Peers, "Veto, Opt-outs and EU Immigration and Asylum law," *Statewatch Briefing*, 23 December 2004.

⁴³⁶ The 2001 Council Regulation No 539/2001 concerns the list of the third countries whose nationals should be in possession of visas to cross external borders and those whose nationals are exempt from that requirement. The list of countries has been amended several times since adoption.

on the proposals were taken in the Council by qualified majority. The EP's position was not very influential due to the consultation procedure. Despite the extension of co-decision procedures in a number of areas related to the justice and home affairs field following the adoption of the Hague Programme in 2004-2005, the determination of negative and positive visa lists was subject to the consultation procedure.

Under the Amsterdam Treaty procedures (as described in Article 300 (1) TEC), the process to sign a visa facilitation agreement with a third country should be initiated by the European Commission with a proposal. After the approval of the Council to start the negotiations, the Commission had the main responsibility for negotiating with the third country. However, the Commission was expected to maintain a close contact with the relevant committees formed of member state representatives. The mandate that was given by the Council along with the authorisation could also limit the scope of the Commission action in the course of the negotiations.⁴³⁷

Post-Lisbon:

After the ratification of the Lisbon Treaty in 2009, Article 77 (2) TFEU has replaced the 62 (2)(b) TEC on short-stay permits. Ordinary legislative procedure is extended to measures for determining the list of nationalities that are required to obtain a short-stay visa and could travel to the EU without a visa for short-stays. The introduction of the co-decision with the ordinary procedure has given a substantial role to the EP as the co-legislator with the Council with respect to the visa policy.

As in the case of readmission agreements, Article 218 TFEU (former Article 300 TEC) has increased the influence of the EP in relation to visa facilitation agreements. After the ratification of the Lisbon Treaty, EP's approval has become a legal requirement for a visa facilitation agreement to be signed. The EP exercised its competence for the first time with respect to the visa facilitation agreement with Georgia. If the negotiations with Belarus continue without problems, the visa facilitation agreement with Belarus has to be approved by the EP as well. Given that the decisions regarding the agreements

⁴³⁷ Tom Delreux, "The European Union in international environmental negotiations: a legal perspective on the internal decision-making process," *International Environmental Agreements* 6 no. 3 (2006): 239.

that were signed with Ukraine and Moldova were taken under the Amsterdam Treaty procedures, the EP's approval was not required.

5.1.2.3. Labour Migration

Labour migration has been the least harmonised migration policy area in the EU. The EU member states have traditionally been reluctant to transfer their competences to the EU level in relation to labour migration policy area. Although there has been a treaty basis for the EU action in the field of legal migration since the ratification of the Amsterdam Treaty in 1999, the EU level cooperation has been very limited in line with the domestic concerns of the member states as outlined in the previous chapter. Despite the longstanding reservations of certain EU member states that have become traditional migrant receiving countries in the post-war period (particularly France, Germany and the UK), there has been an increasing EU level debate on expanding different legal migration opportunities including labour migration for a better management of migration to the EU. Offering legal migration opportunities is considered to be instrumental in encouraging third countries to cooperate with the member states particularly in fighting against irregular migratory pressures to the EU.⁴³⁸

With Article 63(3) (a) TEC, the European Community acquired the competence to adopt measures regarding 'conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion'.⁴³⁹ However, the exclusive competence of the member states in determining the volume of economic migrants that could enter their labour markets was secured.⁴⁴⁰ Although the Amsterdam Treaty gave the European Commission the right to develop policy proposals, the legislative development process has been very slow in this policy field. In 2001, the Commission proposed the Council to adopt a comprehensive Council directive on the employment of

⁴³⁸ Thessaloniki European Council 19 and 20 June 2003- Presidency Conclusions, 11638/03 October 1, 2003.

⁴³⁹ In addition to Article 63(3) (a), Steve Peers and Nicola Rogers claim that Article 137 TEC could also arguably provide a legal basis regarding the access of third country nationals to the EU labour market. See: Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law: Text and Commentary* (Leiden: Brill, 2006): 677-78.

⁴⁴⁰ Council of the European Union, "The Hague Programme: Strengthening Freedom, Security and Justice in the EU, 2005/C/01. (OJ C53/1), March 3, 2005. 79 (5) TFEU also explicitly stated that the volumes of economic migrants (both self-employed or employed) is determined by the Member States.

third country nationals defining EU level shared rules and conditions.⁴⁴¹ However, the member states could not reach an agreement on the proposal. Given that the Council was supposed to act by unanimity in relation to labour migration policy area, it was very difficult to reach an agreement due to strong objections from certain member states such as Germany. The proposal was eventually withdrawn by the Commission.⁴⁴²

In 2004, the multi-annual Hague Programme on justice and home affairs cooperation put an emphasis on the need for an EU level debate on economic migration to the EU and requested the Commission to develop a policy framework.⁴⁴³ Building on the Hague Programme, the European Commission released a green paper to re-launch a debate on developing an EU level policy on labour migration in 2004. The Commission proposal on the legal migration policy was presented following the public consultation process on its green paper in 2005. Compared to the 2001 Directive proposal which adopted a 'horizontal framework' involving the entry of economic migrants of all skill levels, the 2005 policy plan of the European Commission was less ambitious due to the lack of interest among the member states in an all-encompassing framework.⁴⁴⁴ Due to the reluctance on the part of the member states to give up their veto power, the 2005 policy plan adopted a sectoral approach focusing on certain categories of economic migration for which there was a consensus among the member states. These categories included highly skilled migrants, seasonal workers, intra-corporate transfers and paid trainees. Due to its limited scope, the policy plan did not satisfy certain member states that have a liberal approach towards labour immigration such as Sweden.⁴⁴⁵ Moreover, the European Parliament was not satisfied with the lack of a general directive.⁴⁴⁶

⁴⁴¹ European Commission, "Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities," COM (2001) 386, July 11, 2001.

⁴⁴² European Commission, "Outcome of the screening of legislative proposals pending before the Legislator," COM (2005) 462 final, September 27, 2005.

⁴⁴³ Council of the European Union, The Hague Programme: Strengthening Freedom, Security and Justice in the EU, 2005/C/01. (OJ C53/1) March 3, 2005.

⁴⁴⁴ European Commission, "Policy Plan on Legal Migration," COM (2005) 669 final, December 21, 2005.

⁴⁴⁵ Åsa Carlander, Legal counsellor, Permanent Representation of Sweden to the European Union, 1 February 2011, Brussels.

⁴⁴⁶ European Parliament LIBE Committee, "European Parliament resolution on the Policy Plan on legal migration," A6-0322/2007 / P6-TA-PROV(2007)0414, 26 September 26, 2007.

Decision-Making Procedure:

Among the four case study areas, the constraints that were imposed by the EU's legal framework on the member states were the lowest in the area of labour migration under the Amsterdam Treaty procedures. According to the decision-making procedures indicated in Article 67 TEC, decisions related to the policy areas that were covered under Article 63 TEC should be taken by unanimity. Although Article 67 TEC stated that the unanimity requirement would be abolished after the end of the five-year transition period, legal migration area was exempt from this requirement as pointed out in Article 63 TEC due to the reluctance on the part of the member states to give up their veto power. In line with this exception, the Hague Programme did not give a political mandate for the transfer of legal migration domain to QMV. Due to their veto power, the member states had a strong control over the decision-making process.⁴⁴⁷ Their responses to the European Commission's Green Paper on Legal Migration (despite its limited scope compared to the former 2001 Directive) also have shown the lukewarm position of the member states with respect to harmonisation in this policy area.

Under the Amsterdam Treaty, the EP had a limited level of involvement in the course of decision-making on legal migration due to the consultation procedure. Although the Council had to consult the EP before reaching a decision, the position of the EP was not legally binding on the Council in the area of labour migration. Although a number of policy areas that were covered under Title IV of the TEC on migration were transferred from consultation to co-decision procedure after the end of the five-year transition period, labour migration continued to be decided under the consultation procedure.

Post-Lisbon

With the ratification of the Lisbon Treaty in December 2009, the member states have lost their veto power with respect to labour migration policy area. Article 79(2) (a) TFEU has replaced Article 63(3) (a) regarding the long-term visas and residence. Under the ordinary legislative procedure, the decision-making procedure in the Council with respect to for labour migration was changed from unanimity to QMV in the Council.

⁴⁴⁷ During the 5-year transitional period after the ratification of the Amsterdam Treaty, the Commission shared its competences to initiate a proposal with the Member States. Although the Commission becomes the sole initiator following the end of the transition period, the Treaty affirms that the Commission should look into the requests from the Member States.

Despite further ‘communitarisation’ of the policy area, Article 79(5) TFEU has clearly protected ‘the right of the Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Despite the general reluctance on the part of some member states to share their decision-making powers in the area of labour migration, the EP has become a co-legislator along with the Council in relation to labour migration area with the Lisbon Treaty.

5.1.2.4. Asylum Policy

The EU policy on asylum has evolved interconnected with migration policy. In the aftermath of the Cold War, the member states were highly concerned about mounting asylum applications due particularly to the political instabilities in the broader neighbourhood of the EU.⁴⁴⁸ The decrease in other forms of legal migration opportunities to the EU member states since mid-1970s has been considered a contributing factor as well.⁴⁴⁹ As presented in Chapter 4, the member states started to revise their liberal asylum policies following the rise in asylum applications. After the signing of the Schengen Agreement in 1985, the signatory Member States were urged to cooperate among themselves regarding asylum. A number of measures were adopted among the Member States at the intergovernmental level. The border free zone made it easy for asylum seekers to move from one member state to another and issue several applications. In 1990, the Dublin Convention was signed among the Schengen members to determine which member state is responsible for assessing an asylum application and control asylum applications through prohibiting the issuing of several coinciding applications.⁴⁵⁰

⁴⁴⁸ European Commission, “Communication from the Commission to the Council and the European Parliament on the right of asylum, Discussion Paper on the Right to Asylum,” SEC (91) 1857, October 11, 1991.

⁴⁴⁹ Ingrid Boccardi, *Europe and refugees: towards an EU asylum policy* (The Hague: Kluwer Law International, 2002): 27.

⁴⁵⁰ Council of the European Union, “Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention,” OJ C 254, August 19, 1997, accessed January 8, 2012 [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0819\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0819(01):EN:HTML).

In addition to the internal mechanisms such as the Dublin framework that regulate the burden sharing among the Member States, the Member States adopted policy tools that transfer certain responsibilities outside of the EU. In 1992, the ministers who were responsible with immigration agreed to transfer certain responsibilities outside of the EU and introduced the safe third country principle.⁴⁵¹ Based on this principle, an asylum seeker could be expelled to a ‘safe’ third country that he or she had transited from prior to entering the EU territory to apply for an asylum.⁴⁵² The agreement was reached at the intergovernmental level among the Member States outside of the existing EU framework. At the following European Council meeting, the heads of states reaffirmed their support to the agreement.⁴⁵³

The integration of the Schengen Convention into the Amsterdam Treaty created an EU level legal basis. Article 63 (1) and (2) TEC have provided the legal basis for the adoption of measures related to asylum, refugees and displaced persons. These items mainly dealt with internal measures in relation to determining minimum standards (such as on reception conditions for asylum seekers and procedures for giving or taking away refugee status) and allocation of responsibility among the Member States.

Although the EU Member States had already integrated third countries in their management of asylum, the external dimension of asylum policy is not explicitly mentioned in the Amsterdam Treaty. In line with the Amsterdam Treaty commitments that were related to the internal aspects, the Tampere programme referred to the development of the Common European Asylum System (CEAS) focusing on the internal aspects as well. The extent to which the EU Member States could cooperate with third countries regarding asylum has been a salient topic. Some Member States argued that the transfer of responsibilities to manage asylum demands to third countries

⁴⁵¹ Council of the European Union, “Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries (“London Resolution”),” November 30, 1992, accessed January 08, 2012 [http://www.unhcr.org/refworld/publisher,COUNCIL,,,3f86c3094,0.html](http://www.unhcr.org/refworld/publisher/COUNCIL,,,3f86c3094,0.html).

⁴⁵² According to the London Resolution (1992), a host country could be considered safe to return asylum seekers if their life and freedom are not endangered and it is guaranteed that they will not face with torture or inhuman or degrading treatment. The EU does not have a common safe third country list.

⁴⁵³ Council of the European Union, “Edinburgh European Council 11-12 December Presidency Conclusions-(Part A, Point 22),” accessed January 2, 2012 http://www.europarl.europa.eu/summits/edinburgh/default_en.htm.

against the commitments that were made as signatories to the Geneva Convention. Moreover, the ability of certain third countries in terms of managing asylum applications and processing was questioned by several actors as the UNHCR and the ECRE.⁴⁵⁴ Reflecting on the debates, the Hague Programme, the second multi-annual programme on the development of JHA cooperation, gave a political mandate to the development of external measures including the Regional Protection Programmes.

Although the Hague Programme is not a legislative instrument, the Heads of States gave the EU institutions a political mandate to further develop cooperation with third countries in the area of immigration. The European Pact on Immigration and Asylum agreed in 2008 also reinforced cooperation with third countries under the Regional Protection Programmes and capacity development in the partner countries. The external part was also stressed by the Stockholm Programme underlining cooperation and solidarity with third countries for them to increase their capacity with respect to handling asylum applications through the Regional Protection Programmes.

Decision-Making Procedure:

According to the Amsterdam Treaty procedures, asylum policy was adopted mostly by QMV in the Council. Article 63(1) that identified the main competences of the EC was decided based on QMV since the ratification of the Amsterdam Treaty. These articles were mainly concerned about the adoption of the internal measures in relation to determining minimum standards and allocation of responsibility among the Member States. The exception was Article 63(2) (b) TEC on ‘promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons’ in line with the procedures identified Article 67(5) TEC. The EP acquired co-decision competences for the areas that are covered under 63(a) and 63(2)(a).

⁴⁵⁴ European Council on Refugees and Exiles, “Protection in third countries”, accessed January 8, 2012 <http://www.ecre.org/topics/areas-of-work/introduction/41-protection-in-third-countries.html>.

Post-Lisbon

The political mandate of the Hague Programme with respect to EU action in the area of external dimension of asylum policy is further strengthened by the legal basis provided by the Lisbon Treaty regarding cooperation with third countries on the issue of asylum. In line with the Hague, Article 78(2) (g) TFEU has created a legal basis with respect to the adoption of measures regarding ‘partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum and subsidiary protection’. This has given the EU a legal competence to further expand its cooperation with third countries regarding asylum policy.

5.1.3. Conclusions

The analysis above demonstrated that the legal framework of the EU has increasingly permitting more constraints with respect to an intergovernmental bargaining. However, it should be stated that the level of constraint is different with respect to each case study. Among the areas that are analysed, visa policy has been the most harmonized case. On the other hand, labour migration policy still is highly restricted at the EU level due to the reluctance of the Member States in developing an EU level policy. Moreover, the unanimity requirement under the Amsterdam Treaty has restricted the European Commission to put forward ambitious proposals. However, it is also shown that the Lisbon Treaty has increased the competences of the supranational institutions in these areas.

5.2. The EU’s institutional structure in the area of external dimension of migration

After mapping out the legal framework in the area of the external dimension of migration in the first part of this Chapter, this section deals with the EU’s institutional structure. It aims to portray how the institutional structure has developed in this policy area in view of the legal framework presented above. The analysis focuses on the four main decision-making institutions: the Council of the EU, the European Council, the

European Commission, and the European Parliament.⁴⁵⁵ The EU's cooperation with third countries in the area of migration has traditionally been under the strict control of the officials who have thematic responsibility with respect to migration. With the ENP, this picture has been changing. The external relations policy actors have gained horizontal competence with respect to the policies that are integrated within the ENP including migration. In line with this, the section presents the following: (i) the justice and home affairs actors, and (ii) external relations actors.

5.2.1. The Council of the European Union: Hard bargaining vs. Compromise

The Council of the European Union⁴⁵⁶ is considered the main 'intergovernmental' decision-making body in the EU. According to the state-centric theoretical approaches to the EU, Member States' governments engage in decision-making and negotiate at various levels within the Council structure with their exogenous national preferences and based on their relative bargaining power. They are involved in and support policies based on their pre-determined interests. According to Moravcsik, joint decision-making in the Council does not lead to the development of a collective interest among Member States at the EU level.⁴⁵⁷ However, the decision-making mechanism in the Council is not entirely intergovernmental. It could be observed that the intergovernmental and supranational areas of EU's institutional structure increasingly overlap in the EU. Westlake and Galloway point at the fact that the negotiations in the Council incorporate both supranational and intergovernmental elements.⁴⁵⁸ From a state-centric point of view, national representatives bargain at the EU level based on the instructions that come from national capitals. Despite the high importance of the pre-determined policy positions of Member States, the negotiations in the Council are not unidirectional or solely based on ministerial instructions. There is room for compromise. Member states

⁴⁵⁵ Hierarchically, the European Council comes before the Council of the EU. However, the thesis first focuses on the Council of the EU due to the relevance of the latter for the thesis.

⁴⁵⁶ The Council of the European Union term is used to define the Council Meetings, the Presidency and the Council Secretariat.

⁴⁵⁷ Andrew Moravcsik, "Liberal intergovernmentalism and integration: a rejoinder," *Journal of Common Market Studies* 33 (1995): 611-28.

⁴⁵⁸ Martin Westlake and David Galloway, "What is the Council?" in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 7-9.

move from their national pre-determined positions due to the impact of the complex EU decision making mechanism.

Member states form ‘a complex web of long term interest groupings’⁴⁵⁹ based on their policy preferences concerning different issue areas. These groupings could be based on geographical proximity, size, political orientation or economic condition of member states. As stated by a Council Secretariat official, ad-hoc interest groups based on common interest of Member States in an issue area is highly common as well.⁴⁶⁰ In this framework, national delegations in Brussels feed the debates in Brussels to policy-makers based in capitals. National representatives have the leverage to build networks and provide the setting to their capitals which feed compromise-building. They consider the positions of other Member States through formal or informal contacts in Brussels. They feel the tone concerning which policies could be accepted or not and the actors who could be on their side to make sure that they guide their colleagues based in capitals accordingly. Informal meetings among member state officials are important to get to know the position of other member states. These meetings could take place among certain Member States that have common interest or could be organized by the Presidency to talk to the Member States that have a concern or interest with respect to an issue.

Despite the official QMV voting requirements, the actual act of voting is not a regular practice in the course of Council negotiations. Rather than strict calculation of the votes, the decision making is rather an ‘inclusive’ process where the Presidency (as the chair of the Council sessions) is inclined to seek agreements that convince all actors including the ones that express initial discontent with the matter. There is an effort to work towards a final decision that would satisfy all member states to a certain degree and

⁴⁵⁹ Martin Westlake and David Galloway, “The Permanent Representatives Committee (Coreper),” in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 266.

⁴⁶⁰ Interview with EU Official B, May 2009, Brussels.

address their reservations.⁴⁶¹ Consensus-building is essential to boost implementation/compliance at the national level in the member states.⁴⁶²

Within the Council negotiations, the member states are encouraged commonly by the Presidency or the Council Secretariat to take part in negotiations and be open to compromises to avoid marginalization. Lewis argues that ‘culture of compromise’ is a significant tool of the negotiations among the permanent representatives which they are ‘socialised’ to within the Council negotiations.⁴⁶³ The permanent representatives are encouraged to have ‘self-restraint’ in safeguarding their national interest. The member states are motivated to move from their initial position to avoid isolation in the areas where they do not have veto power. The ‘culture of compromise’ is mainly present among member states’ permanent representatives to the EU who meet regularly in the framework of the Permanent Representatives Committee (COREPER). It is a horizontally functioning committee that has responsibility across all policy fields that are discussed in the EU.⁴⁶⁴ Within the COREPER meetings, member states’ representatives negotiate a diverse set of issues and there is prospect for linking different subject matters at hand to reach a deal.⁴⁶⁵ Diplomatic experiences and negotiation skills of permanent representatives are considered an asset to reach a collective decision at the EU level.⁴⁶⁶ It is highly common for member states to reach compromises on policy debates at the COREPER level ahead of sectoral Council meetings.⁴⁶⁷ Quid pro quo agreements and concessions across different issue areas are commonly made in the course of negotiations. There is a constant information flow

⁴⁶¹ Ibid.

⁴⁶² Fioana Hayes-Renshaw, Wim van Aken and Helen Wallace, “When and Why Council of Ministers of the EU Votes Explicitly?,” *Journal of Common Market Studies* 44, no.1 (2006): 161-94.

⁴⁶³ Jeffry Lewis, “The methods of community in EU decision-making and administrative rivalry in the Council’s infrastructure,” *Journal of Public Policy* 7, no.2 (2000): 261-89.

⁴⁶⁴ The deputy national representatives meet as COREPER I. The member state ambassadors to the EU form COREPER II where political, institutional and economic matters are covered including migration. There is a division of labour between COREPER I and II.

⁴⁶⁵ Jeffry Lewis, “The methods of community in EU decision-making and administrative rivalry in the Council’s infrastructure,” *Journal of Public Policy* 7, no.2 (2000): 261-89.

⁴⁶⁶ Fiona Hayes-Renshaw and Helen Wallace, *The Council of Ministers*, 2nd (Houndmills, Palgrave Macmillan, 2006): 72.

⁴⁶⁷ Interview with EU Official B, May 2009, Brussels.

between the COREPER and their national counterparts in member states' capitals.⁴⁶⁸ Being based in Brussels, permanent representatives have an information advantage over their colleagues who are based in national capitals. They are able to closely follow the development of EU level policies and the policy positions of other actors due to their frequent contacts with the EU institutions and officials from other member states.

The level of compromise also depends on whether an issue is a priority area for a policy actor. If it is an issue highly central to national interests, it is hard for a member state to move from its initial policy position. As expressed by a national representative, national delegations in Brussels are bound by the instructions that they receive from their capitals. This makes compromises in the course of Council negotiations very challenging and time consuming.⁴⁶⁹ The national instructions that are sent to permanent representations from their capitals are commonly a compromise document involving details from various ministries. The priorities and concerns are negotiated at the national level and then presented to the national representatives in Brussels by the main ministry in charge of the issue. In the course of Council negotiations, national representatives are bound by their capitals if they are asked to make compromises. The dynamics between different ministries also influence the policy making process.

Considering a migration related issue, the probable ministries that could be involved are Ministry of Interior/Justice, Ministry of Foreign Affairs, Ministry of Labour, Ministry of Economy and Ministry of Business/Industry.⁴⁷⁰ Various other ministries could be added depending on the issue area, such as Ministry of Health or Education. The main ministry in charge (or a national coordination body as in the case of France) coordinates the priorities that are reflected by these ministries. Moreover, there could be different viewpoints within a ministry as well. Taking the Foreign Ministry as an example, the units that are responsible for general bilateral relations with a country (i.e. country

⁴⁶⁸ Martin Westlake and David Galloway, "The Permanent Representatives Committee (Coreper)," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 209.

⁴⁶⁹ Interview with Member State official A, May 2009, Brussels.

⁴⁷⁰ The issue of migration is mostly the responsibility of ministries of interior or home affairs in the EU Member States. In some Member States (such as Sweden), the Ministry of Justice is responsible. In some cases, migration related duties are split up between different ministries. Some Member States (such as France) establish specialized ministries that are in charge of migration issues.

desks) and for visa negotiations (i.e. visa desks) could have different policy positions with respect to a matter on migration.

During EU level negotiations, national representatives might also move away from their national instructions and have to negotiate with their capitals more than in Brussels with other member states. The ‘internal coordination’ mechanisms in the Member States moderate related national actors that are taking part in decision making. Interests and concerns of relevant ministries are taken into account while the national position and instructions are developed. However, the process of negotiations in the Council should be taken into account as well. With their experience and contacts in Brussels, national representatives provide their capitals with feedback concerning EU level negotiations.⁴⁷¹ For the negotiations taking place at lower levels than permanent representatives such as officials at working group level, the ranking of the expert in the ministry he or she belongs to is significant for the negotiator to take the initiative.⁴⁷²

Member States are encouraged to compromise with respect to the matters that are relatively less significant for them. Presenting a balanced attitude could increase the credibility of a member state and help achieve its actual policy priorities. With respect to the negotiations that pave the way for legal changes (which is very common in the area of migration policy), member states are relatively more reluctant to compromise.⁴⁷³ This makes national representatives less willing to move from their initial position and compromise at the EU level. However, it is worth noting that the members are committed to the European integration process and aim that it nevertheless works.⁴⁷⁴

⁴⁷¹ Martin Westlake and David Galloway, “The national negotiator in Council Preparatory Groups,” in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 228.

⁴⁷² Martin Westlake and David Galloway, “The national negotiator in Council Preparatory Groups,” in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 221.

⁴⁷³ Interview with Member State Official A, May 2009, Brussels.

⁴⁷⁴ David Spence, “Negotiations, coalitions and the resolution of inter-state conflicts,” Westlake & Galloway, in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 259.

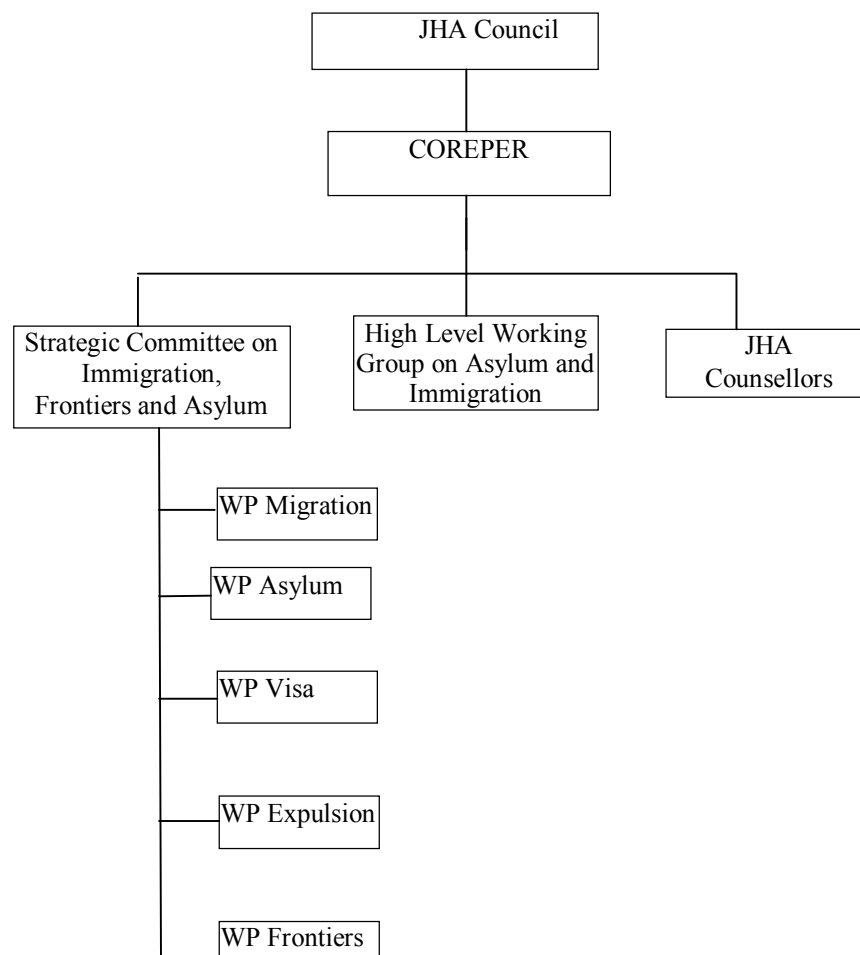
Main organisational structure

Although the Council of the EU is formally a single institution, it is essentially formed of Councils responsible for sectoral policy areas with different levels of decision-making structures and dynamics.⁴⁷⁵ The EU migration policy falls under the responsibility of the JHA Council that consists of interior, justice or special migration ministers.⁴⁷⁶ Due to the increasing integration of a migration dimension to EU's external policies and relations with third countries, as in the case of the ENP and the Eastern Partnership, the involvement of actors who have geographical competence with respect to those regions has increased. Formed of the foreign ministers of member states, the Foreign Affairs Council has a geographical horizontal competence with respect to the ENP and the Eastern Partnership.

⁴⁷⁵ Fiona Hayes-Renshaw and Helen Wallace (2006) *The Council of Ministers*, St Martin's, 14 (Article 203 of the TEU) The frequency of the meetings depends on the importance of the issue area.

⁴⁷⁶ For the purposes of simplicity, this thesis refers them as ministers of interiors.

**Figure 1. Council of the EU Institutional Structure concerning Migration Policy
(Title IV TEC-First Pillar)⁴⁷⁷**



The JHA Council

Formal decision-making process in the JHA Council concerning EU migration policy starts with a proposal adopted by the European Commission that has acquired exclusive initiative power concerning migration since 2004 as explained in the first section of this Chapter. Within the JHA Council, negotiations continue at several levels (See Figure 1).⁴⁷⁸ As in other sectoral Councils, the responsibility for decision-making in JHA

⁴⁷⁷ It should be noted that the table provided by Nilsson regarding JHA Council decision-making is used as guidance. Hans G. Nilsson, "The Justice and Home Affairs Council," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 133.

⁴⁷⁸ Hans G. Nilsson, "The Justice and Home Affairs Council," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 135.

Council rests with the relevant ministers or national representatives who have administrative authority representing member state governments in Council meetings. Below the JHA Council, there are several preparatory bodies that are responsible for the planning of Council meetings and by and large pursue the negotiation process in the Council. In view of diverging national regulations in member states, the EU level decision-making involves dealing with technical details of policy proposals in the course of adoption of legal acts. Bearing this in mind, the role of the preparatory bodies is particularly significant for decision-making in the JHA Council.⁴⁷⁹

The first level is the specialised working group level that national experts (appointed by ministries of interior, justice or migration) meet depending on their area of expertise. When the Council receives a proposal from the European Commission, negotiations normally start at the working group level. Discussions predominantly evolve around the technical details of proposals at the working group level. The debates that take place at this level are particularly significant for legislative proposals due to the expertise of policy officers in technical issues. Non-legislative and politically sensitive proposals that require concessions are normally dealt with at a higher level.⁴⁸⁰ The interviews that were conducted with EU and national officials have shown that the issues that are related to the external dimension of migration tend to move upwards due to their political salience.

Above the working group level, there are two senior committees responsible for migration issues attended by high level bureaucrats that come from member states. The first committee is the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)⁴⁸¹ that is attended by senior officials representing interior or justice

⁴⁷⁹ Hans G. Nilsson, "The Justice and Home Affairs Council," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 131.

⁴⁸⁰ David Spence, "Negotiations, coalitions and the resolution of inter-state conflicts," Westlake & Galloway, in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 265.

⁴⁸¹ The SCIFA does not have a treaty basis and was formed with the COREPER decision in the aftermath of the Treaty of Amsterdam. Hans G. Nilsson, "The Justice and Home Affairs Council," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2004): 135.

ministries.⁴⁸² After being discussed at technical working group level, migration issues are normally transferred to the SCIFA committee. The SCIFA is predominantly responsible for the issues related to the internal dimension of EU migration policy. The second senior level preparatory group, the High Level Working Group on Asylum and Immigration (HLWG) is of particular interest to the thesis due to its specific responsibility with respect to the external dimension of EU's migration policy. Founded in December 1998, the HLWG is responsible for the external aspects of migration and tackling the development needs (political, human rights, development concerns) of third countries in line with the increasing comprehensive approach to migration.⁴⁸³ As the external dimension of migration falls under the domain of several ministries, the member states are commonly represented by a set of ministries in the HLWG. For instance, in the UK, Foreign Office and the Department for International Development (DFID) and the Home Office attend the HLWG with a common position.⁴⁸⁴ In Germany, the Foreign Office and the Ministry of Interior are responsible with attending the HLWG with the Foreign Office in the lead.⁴⁸⁵

When the HLWG was founded, its initial tasks included determining main countries/regions that were either source of or transit for migratory pressures to the EU and drawing up Action Plans to tackle the roots of these pressures. The HLWG Action Plans were EU's early cooperation tools with third countries.⁴⁸⁶ In line with the increasing importance given to the external dimension of migration policy, the HLWG acquired further responsibilities in 2002. According to the new mandate, the HLWG became responsible for producing a consistent strategy in a cross-pillar framework concerning the main source and transit countries of migration to the EU (both asylum

⁴⁸² In addition to meetings among the member state representatives, SCIFA also comes together with 'heads of frontiers guards' in relation to issues concerning EU borders under the framework of 'SCIFA+' Hans G. Nilsson, "The Justice and Home Affairs Council," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2004): 132.

⁴⁸³ Joanna Van Selm "Immigration and Asylum or Foreign Policy: The EU's Approach to Migrants and Their Countries of Origin," in *Externalities of Integration: The Wider Impact of The Developing European Asylum and Immigration Policy*, eds. Sandra Lavenex and Emek Uçarer, (Philadelphia: Lexington Books, 2003): 148-9.

⁴⁸⁴ Interview with a Member State official, September 2009, London.

⁴⁸⁵ Interview with National Expert, September 2009, Berlin.

⁴⁸⁶ Steven Sterkx, "The External Dimension of EU Asylum and Migration Policy: Expanding Fortress Europe," in *EU's global role: external policies of the European Union*, ed. Jan Orbie (Aldershot: Ashgate, 2008): 119.

seekers and immigration) focusing more on the link between migration and development as well as having a broader geographic coverage.⁴⁸⁷ These early Action Plans broadly focused on restrictive measures to deal with the migratory pressures to the EU. The proposals that were drawn up in the Action Plans primarily proposed concluding readmission agreements with the countries concerned and adopting restrictive measures. The development or conflict resolution needs in the root or transit countries of migration were not soundly addressed in the Action Plans. The approach of the HLWG was not welcomed by the European Parliament and the UNHCR due to its stress on transferring burden to third countries through externalising the control rather than addressing ‘root causes’ of these pressures.⁴⁸⁸ There were also concerns in the Commission in relation to the approach adopted by the HLWG towards third countries as well as in relation to budgetary issues.

In addition to these specialised committees, member state representatives based at permanent representations in Brussels form ‘JHA Councillors’ working group take part in the decision-making process. Although they are based in Brussels, they keep very close relations with their home ministries. JHA Counsellors are considered as effective on issues that are both politically sensitive and require high technical knowledge.⁴⁸⁹ Being based in Brussels, a sense of rapport is developed among the JHA counsellors of different member states.⁴⁹⁰ Informal dialogue among the officials from different member states could help identify coalition partners or different views ahead of formal discussions. They have information advantage over the officers based in ministries. Although negotiation instructions formally come from the national ministries of member states to Brussels, informal dialogues among policy officers in Brussels feed into negotiations. JHA Counsellors negotiate more with their ministries than with their counterparts from other member states in Brussels.⁴⁹¹

⁴⁸⁷ Council of the European Union, “Modification of the terms of reference of the High Level Working Group on Asylum and Migration (HLWG),” 9433/02 limite, May 30, 2002.

⁴⁸⁸ Christina Boswell, “The External Dimension of EU immigration and asylum’ policy,” *International Affairs* 79, no.3 (2003): 630.

⁴⁸⁹ Hans G. Nilsson, “The Justice and Home Affairs Council,” in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 134.

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid.

The final preparatory level before ministerial Council meetings is the COREPER. The COREPER is formed of diplomats who have general knowledge about policy areas. They are supported by working groups that are formed of officers who have specialised expertise. Being composed of senior staff and junior experts from relevant ministries, Council working groups deal with the issues that mostly require knowledge about technical legislative details. Negotiations among the member states are normally initiated at working group level responsible for a specific policy area before they are transferred to the COREPER level that has a horizontal competence.⁴⁹² In the area of migration, the SCIFA and HLWG as high level committees feed into Council meetings as well. The involvement of senior officers in decision-making with special experience through these committees could decrease the influence of the COREPER.⁴⁹³ The practice of forming specialized committees is common for the area of JHA given the sensitivity of policy area for the member states. However, policies still go through COREPER.

Due to their horizontal responsibility over policy areas, COREPER meetings could allow for addressing ‘common priorities’ rather than individual concerns of sectoral ministries. This is particularly important for the policy areas that fall under the remit of several Council groups such as the external dimension of migration. As the external dimension of migration policy is relevant for both the Justice and Home Affairs and the Foreign Affairs Councils, it is vital to reach a consensus among different actors who have different policy directions. Regional policy priorities tend to be more important for foreign ministries, whereas security issues are prioritized by the officers from ministries of interior. The debates at COREPER level could lead to reconciliation of incompatible priorities that are being upheld by different actors.

⁴⁹² The Presidency could decide whether they would like to start it at the Working Group level or take an issue straightaway to the Ministers. For instance, the Global Approach to Migration and the Stockholm Programmes are not discussed at the Working Group level.

⁴⁹³ Martin Westlake and David Galloway, “Other Council Preparatory Groups,” in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 217.

Increasing involvement of the Foreign Affairs Council

Although the EU decision-making concerning migration policy falls under the sphere of the JHA Council, the increasing external dimension has increased the involvement of the Foreign Affairs Council. After being a part of General Affairs and External Relations Council (GAERC) since, the Foreign Affairs Council has been constituted as a separate Council with the ratification of the Lisbon Treaty. The involvement is not only at the level of ministers but also at the working party level. The Working Party on Eastern Europe and Central Asia (COEST) has a horizontal mandate with respect to the management of the relations with Ukraine, Moldova and Belarus. The scope of the mandate also encompasses the migration dimension of cooperation.

The early policy documents regarding EU cooperation about the external dimension of justice and home affairs have over the years addressed the issue of coherence between the geographical and thematic dimensions. In the area of migration, the coordination of the geographical and thematic groups has become more important due to the increased importance that the Member States put on migration in their relations with third countries. The High Level Working Group on Migration focuses on the external dimension of migration that brings together officials from ministries of foreign affairs, home affairs or development.

With the introduction of the ENP and the Eastern Partnership, this issue has been very crucial for the JHA dimension and the regional coordination. With the aim of enhancing the consistency between the JHA and the external dimension of the policies tackled under the JHA, an Ad Hoc support group was established in October 2008.⁴⁹⁴ The JAIEX horizontal working group is formed to better coordinate the issues that fall under JHA as well as external relations as a ‘coordination and information mechanism’. The JAIEX working group is aimed at facilitating ‘a regular information flow’ among the working groups dealing with JHA issues such as High Level Working Group or SCIFA and geographical/thematic RELEX working group, for instance COEST concerning the immediate Eastern neighbours. It is targeted that the JAIEX support group will enhance

⁴⁹⁴ Council of the European Union, “On the Creating of an Ad Hoc Support Committee concerning the external dimension of JHA questions,” 14431/01/08, October 28, 2008.

the coordination on issues that incorporate several working groups under the JHA and RELEX.

An area where the JAIEX group would be effective is the issues on specific geographical areas. During the negotiations of the Eastern Partnership, the JAIEX committee took place in the negotiations in the Council to manage the horizontal coordination between different preparatory bodies.⁴⁹⁵ The monthly meetings of the JAIEX working group also provide a venue for the member states to present a more consistent approach. However, the JAIEX framework has its limitations with respect to increasing coherence between regional and thematic policy actors. Although the Directorate-General responsible with home affairs issues from the European Commission attends the meetings, the regional units from the European Commission are not represented in the JAIEX.⁴⁹⁶

Role of the Council Secretariat

The Secretariat of the Council of Ministers holds responsibilities for supporting the running of the Council meetings as well as working with the preparatory bodies in the Council. Officially holding organizational duties in terms of running the Council meetings, the Secretariat gradually gained further roles in the policy making process assisting the negotiating actors. The Council Secretariat staff contributes to the consensus and compromise building among member states assisting the Presidency with their expertise on the rules of procedures and historical context with their ‘practical procedural background’.⁴⁹⁷ Their role in terms of providing technical and legal advice is particularly important. As the Presidencies change every six months and the longer rotation periods with 27 member states, the Council Secretariat staff provides expertise to the Member States concerning EU decision-making.

The role of the Council Secretariat has always been significant for the JHA Council. The ministers from the ministries of interior or justice traditionally did not have experience with the EU framework and initially expected the Council Secretariat to be

⁴⁹⁵ Interview with EU official B, May 2009, Brussels.

⁴⁹⁶ Interview with EU official D, July 2010, Brussels.

⁴⁹⁷ Interview with EU official B, May 2009, Brussels.

actively involved. Secondly, the preceding absence of the Commission in this area made the Secretariat have a more active role.⁴⁹⁸ Hence, the Secretariat has gone above and beyond its regular designated roles which were note taking, reporting, advising on procedures and providing institutional memory. The Council Secretariat acquired roles as the ‘motor, legal drafter, initiative taker’ as well over the years.⁴⁹⁹ However, this has changed with the increasing involvement and expertise of the Commission in the field. Member states have become more used to communicate with the Commission concerning justice and home affairs issues. In terms of division of labour between the Council Secretariat and the Commission concerning migration, the competences of the Commission have gradually been enhanced.⁵⁰⁰ The Council Secretariat is primarily an institution with a ‘support function’ whereas the Commission is rather perceived as an institution that has its agenda and is inclined to defend its interests acquiring a ‘policy role’.⁵⁰¹ As commented by a Council Secretariat official, ‘it has its strategy, policy and guidelines which does not necessarily coincide with the Presidency. It is an institution with funds and objectives to meet.’⁵⁰²

On the other hand, the scope of the involvement and assistance of the Council Secretariat in the policy making process might increase depending on the experience and size of the member state holding the presidency. The personal initiative and expertise of the Secretariat staff in a subject matter are also important in terms of giving legal advice and being involved as expressed by a Council Secretariat staff.⁵⁰³

5.2.2. The European Council

The European Council, being attended by the heads of states or government, the European Commission's president and the President of the European Council⁵⁰⁴,

⁴⁹⁸ Hans G. Nilsson, “The Justice and Home Affairs Council,” in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 137-09.

⁴⁹⁹ Hans G. Nilsson, “The Justice and Home Affairs Council,” in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 137.

⁵⁰⁰ Ibid.

⁵⁰¹ Interview with an EU official B, May 2009, Brussels.

⁵⁰² Ibid.

⁵⁰³ Ibid.

⁵⁰⁴ In line with Article 15 (1) of the TFEU, the HR for Foreign Affairs and Security Policy also takes part in the European Council's activities. Article 4 of the TEU has stated that the Foreign Ministers should support the European Council. This has changed with the Lisbon Treaty. Article 15 (3) TFEU has

‘provide[s] the Union with the necessary impetus for its development and (...) define[s] the general political guidelines’ in line with Article 15 TFEU. With the ratification of the Lisbon Treaty, the European Council has become one of the EU Institutions.⁵⁰⁵ The Lisbon Treaty underlines that the exclusive role of the European Council is ‘political leadership’ across all policy areas.⁵⁰⁶ On the other hand, it cannot ‘exercise legislative functions’ according to Article 15 (1) TFEU. Although European Council decisions cannot be legally enforced, the EU institutions abide by the conclusions of the European Council due to its political authority.⁵⁰⁷ The conclusions of European Council meetings have an overriding authority in relation to political decisions that shape and influence the EU decision-making. European Council meetings give guidance and political mandate to the EU Institutions with respect to taking a certain policy direction.

The issues that are related to justice and home affairs domain have been of high importance for the European Council. The European Council has acted as ‘agenda setter’ through the introduction of multi-annual programmes.⁵⁰⁸ Since the communitarisation of the policy areas related to migration with the ratification of the Amsterdam Treaty in 1999, the European Council has held three thematic meetings, in Tampere (1999), Hague (2004) and Stockholm (2009), to provide the Union with multi-annual programmes for the development of the EU policy.⁵⁰⁹ The road maps that are provided with these multi-annual programmes have served to guide the Council, the Commission and the Parliament in their decision-making process. The European Council conclusions have been highly significant for the direction that the external dimension of immigration has taken as well. The evolution of an external dimension to EU’s immigration policy has been supported since the Tampere European Council. With

affirmed that ‘the European Council may decide each to be assisted by a minister’. The President of the Commission could be assisted by a Commission member as well.

⁵⁰⁵ The role and election procedures of the President of the European Council are provided in Article 15(6) TFEU.

⁵⁰⁶ Jean Claude Piris, *The Lisbon Treaty: A Legal and Political Analysis* (Cambridge: Cambridge University Press, 2010): 208.

⁵⁰⁷ Phillippe de Schoutheete, “The European Council” in *The Institutions of the European Union*, ed. John Peterson and Michael Shackleton, 2nd (Oxford: Oxford University Press, 2006): 45-46.

⁵⁰⁸ Hans G. Nilsson and Julian Siegl, “The Council in the Area of Freedom, Security and Justice” in *The Institutional Dimension of the European Union’s Area of Freedom, Security and Justice*, ed. J. Monar (Brussels: Peter Lang, 2010): 69-72.

⁵⁰⁹ The first section of this Chapter evaluates the three programme and their impact on the legislative development in the area of EU’s migration policy.

the Feira European Council, the Member States have provided guidance on the strengthening of the coherence between the internal and external dimensions of the EU policy in the area of the JHA.

The strong involvement of the European Council in the formulation of the external dimension of EU's migration policy signals the dominance of the Member States' policy preferences in the course of the policy development process. According to the state-centric theoretical approaches to the EU, the European Council meetings pave the way for an intergovernmental bargaining to the advantage of politically and economically powerful Member States. On the other hand, the policy outcomes that are set by the European Council could further increase the role of the EU Institutions in the long run. In line with the historical institutionalist approach, decision-makers cannot acknowledge or take into account 'the long term institutional consequences' of their decisions.⁵¹⁰ For instance, the commitments that have been made at the Tampere European Council with respect to the gradual communitarisation of the EU's migration policy became politically binding towards the end of the transition period. The Member States have eventually agreed to give up on the unanimity requirement in the Council and grant the European Parliament co-decision powers in 2004.

5.2.3. The European Commission

As presented in the previous section of this Chapter on the EU's legal framework, the role of the European Commission in justice and home affairs policies was initially limited due to the intergovernmental structure of the cooperation among the Member States based on Title VI of the Maastricht Treaty. Due to the narrow role of the Commission in the third pillar, a task force based at its Secretariat General was initially in charge of justice and home affairs issues including migration. Following the introduction of Title IV of the TEC in 1999 with the ratification of the Amsterdam Treaty, the executive competences of the European Commission have gradually been extended to migration policy area. In line with the decision taken during the Amsterdam Treaty negotiations to transfer migration policies to the first pillar, the Commission first became the co-initiator with the member states for the areas covered under Title IV.

⁵¹⁰ Phillippe de Schoutheete, "The European Council" in *The Institutions of the European Union*, ed. John Peterson and Michael Shackleton, 2nd (Oxford: Oxford University Press, 2006): 47.

After the completion of the 5-year transition period, the Commission gained an exclusive right to make legislative initiatives on issues related to migration. Following the Tampere European Council meeting in 1999, a specialized directorate-general, the DG Directorate-General Justice, Freedom and Security (DG JLS) was established. The European Commission's organizational structure has recently been subject to a number of changes. In 2010, the former DG JLS was divided into two separate units. DG Home Affairs⁵¹¹ has taken over the responsibilities of the former DG Justice, Freedom and Security (now called DG Justice) related to home affairs.

Main organisational structure

The Commission is considered a 'multi-organisation' with different actors who have different policy cultures, organizations and interests.⁵¹² The internal coordination among different units in the Commission is highly significant for the coherence of policy making process. For a document to be published with the name of the Commission on the text, all interested DGs have to show consent on the document. Yet the European Commission is not a unitary entity. Different DGs could have different priorities and policy perspectives on an issue area. This is particularly important for the issues that cut across multiple policy domains and involve several actors such as the external dimension of the EU's migration policy. The main unit in the Commission that is in charge of migration related cooperation at the EU level is the DG Home Affairs. Over the years, the involvement of the Commission units that have responsibility concerning relations with third countries has increased in line with the emphasis that has been put by the EU to integrate migration cooperation in their relations with third countries. The involvement of the DG responsible for External Relations of the EU (DG RELEX)'s role increased due to its role in EU's relations with third countries including the EU's eastern neighbours. Following the ratification of the Lisbon Treaty in December 2009, Article 27 TFEU introduced the European External Action Service (EEAS) to function under the authority of the High Representative of the Union for Foreign Affairs and Security Policy. The organizational division of labour between

⁵¹¹ See The organigram of the new DG Home Affairs, available at http://ec.europa.eu/dgs/home-affairs/chart/chart_intro_en.htm

⁵¹² Michelle Cini, "Administrative Culture in the European Commission: the case of competition and environment," (paper presented at the fourth biennial International Conference of the European Community Studies Association (ECSA), Charleston, South Carolina, USA. May 11-14, 1995).

the Commission and the EEAS was clarified in March 2010.⁵¹³ Following its establishment in 2010, the newly founded EEAS incorporated the duties of the former DG RELEX.⁵¹⁴ Despite the transfer of the DG RELEX to the EEAS, there is still a Commissioner responsible for Enlargement and the European Neighbourhood Policy in the European Commission. Moreover, there is still an ambiguity regarding the functioning of cooperation between the EU and the partner countries in thematic fields, such as migration cooperation.⁵¹⁵ For clarification purposes, the thesis refers to the DG RELEX to explain the role of the officials responsible with the regional dimension of the ENP cooperation with the partner countries rather than the EEAS.

It also has to be mentioned that the former DG Development⁵¹⁶ became an important actor due to the increased cooperation with third countries in the area of migration. However, there was a so-called geographical division of labour between the DG RELEX and DG Development. The relations with immediate eastern neighbours of the EU fell into the responsibility of the DG RELEX. Accordingly, the following section mainly focuses on the relation between the DG JHA and DG RELEX.

The Directorate-General for Home Affairs

Due to the nature of the justice and home affairs domain in the EU, the DG JHA started to operate in an area that was mainly dominated by intergovernmental circles.⁵¹⁷ The DG JHA had to compete with the Council and national governments who were hesitant to transfer full control of the policy area to the Commission. In addition, the new DG had to ensure the scope of its mandate in the area of migration in view of other possibly relevant actors within the Commission, particularly the DG responsible for Employment

⁵¹³ Council of the European Union, “Explanatory Memorandum Council Decision – Establishing the organisation and functioning of the European External Action Service,” 8029/10, March 25, 2010 <http://register.consilium.europa.eu/pdf/en/10/st08/st08029.en10.pdf>.

⁵¹⁴ Council of the European Union, “Council Decision of 26 July 2010 establishing the organization and functioning of the External Action Service,” (2010/ 407/EU), OJ L 201/30, August 3, 2010.

⁵¹⁵ Rilka Dragneva and Katarzyna Wolczuk, “EU Law Expert to the Eastern Neighbourhood,” in *EU External Relations Law and Policy in the Post-Lisbon Area* ed. Paul James Cardwell (The Hague: T.M.C. Asser Press, 2012): 235.

⁵¹⁶ It should be noted that the DG Development and the EuropeAid Cooperation Office are merged in 2011 following the organizational restructuring in the European Commission. Information regarding the new DG is available at:

http://ec.europa.eu/europeaid/who/about/index_en.htm.

⁵¹⁷ Christina Boswell, “Evasion, Reinterpretation and Decoupling: European Commission Responses to the ‘External Dimension’ of Immigration and Asylum,” *West European Politics* 31, no.3 (2008): 500.

and Social Affairs, to be able to expand its competence and budget.⁵¹⁸ Despite the short time that has passed since its foundation, the DG JHA has become one of the fastest growing units in the Commission.

Putting an emphasis on the external dimension of migration, the conclusions of the Tampere European Council called on the European Commission to work closely with the Council to develop the external dimension of EU's justice and home affairs policy including migration.⁵¹⁹ Although the DG JHA has become the leading unit within the Commission responsible for migration policy, the involvement of the DG External Relations and the DG Development have gradually increased parallel to the increasing emphasis put on the integration of a migration dimension into the EU's external policies by the member states.

The Directorate-General for External Relations

With the introduction of the ENP, the External Relations DG gained horizontal competence with respect to EU's regional policies. DG RELEX was the leading unit responsible for the coordination of ENP. The ENP has integrated thematic policies including migration under a single regional policy framework. Although the DG RELEX was responsible for the relations of the EU with third countries, it was involved in policies that are related to the external aspects of the EU migration policy to the extent that migration issues concern relations with third countries. Due to its horizontal competence, the DG RELEX increased its coordination with the DG JHA with respect to the migration dimension.

The involvement of the DG RELEX with respect to the external relations issues built on the increasing external dimension of the EU's migration policy. The Tampere Council Conclusions underlined the importance of the developing cooperation with third countries within the framework of migration policy. The policy preference for the DG RELEX is to develop constructive and long term positive relations with third countries. The general priority for the DG RELEX concerning migration issue was the coherence

⁵¹⁸ Ibid.

⁵¹⁹ European Council, Presidency Conclusions Tampere European Council, 15-16 October 1999, accessed January 8, 2012 http://www.europarl.europa.eu/summits/tam_en.htm.

between the EU migration policy and the general approach to a third country partner. The main aim is to put the issue of migration parallel to the existing frameworks of relations with that third country.

In the aftermath of the changes with the introduction of the EEAS as discussed above, the full implications of the new setting have to be assessed in a while.

The dynamics of decision-making regarding the external dimension of migration

The emphasis put on the migration cooperation with third countries in the EU paved the way for an increased involvement of the external relations actors in the area of migration. However, the DG RELEX was not content with being enforced by the DG JHA concerning migration issues to the extent that the relations with third countries damaged or redirected.⁵²⁰ Traditionally, the DG RELEX prioritises a ‘coherent external action’ towards a country or a region and aims at incorporating migration cooperation into the general framework of relations.⁵²¹ The input of the DG JHA nevertheless has been significant for the policies that are introduced by the RELEX. However, given the importance of the issue, migration was included as a subject matter under each regional units under the DG RELEX. The issues under migration policy that are under the responsibilities of the DG RELEX include to the extent that they are related to third countries and third country nationals. The role of the DG RELEX is significant for the management of the ENP which includes goals concerning migration cooperation with neighbouring countries as well.

We could differentiate policy preferences between the DG RELEX and DG JHA with respect to how they regard cooperation with the EU’s partner countries on the issue of immigration. The DG RELEX puts emphasis on the need to increase mobility dimension of the cooperation.⁵²² Given that the EU's partner countries towards east consider mobility and visa liberalisation dimensions as one of their top priorities with

⁵²⁰ Christina Boswell, “Evasion, Reinterpretation and Decoupling: European Commission Responses to the ‘External Dimension’ of Immigration and Asylum,” *West European Politics* 31, no.3 (2008): 501.

⁵²¹ Steven Sterkx, “The External Dimension of EU Asylum and Migration Policy: Expanding Fortress Europe,” in *EU's global role: external policies of the European Union*, ed. Jan Orbie (Aldershot: Ashgate, 2008): 126-7.

⁵²² Interview with EU official A, March 2009, Brussels.

respect to the ENP and the Eastern Partnership, there was rather more pressure on the DG RELEX concerning the enhancement of the mobility dimension.⁵²³ Moreover, it was also important to make the ENP ‘marketable’ for the partner countries. The eastern partner countries such as Ukraine were particularly dissatisfied with the ENP due to their aspirations for full accession to the EU. As the ‘owner’ of the policy, the RELEX would be more concerned about how the overall policy is perceived by the partner countries.

The DG JHA has had a rather technical approach towards the issue in terms of the level of preparedness of infrastructure in the partner countries as a condition to offer further liberalisation of cross-border movement. The DG JHA has a more instrumental approach towards cooperation in terms of realizing its goals concerning irregular migration cooperation or asylum (which is closer to the consensus in the Council).⁵²⁴

The DG JHA and DG DEV have different priorities and there is more political debate taking into account the differences in terms of priorities (compare to RELEX). For instance, the DG DEV gives high importance to the issue of ‘brain drain’ and its causes on the development of third countries. The DG JHA and DG DEV have a quite diverging opinion concerning how they regard ‘brain drain’ issue and legal migration/skilled labour migration.⁵²⁵

Moreover, the DGs that are involved in migration issues work with different external constituencies in the Council or in the member states. The DG JHA mainly cooperates with officials from ministries of justice/home affairs who traditionally have strong intergovernmental focus due to the sensitivity of the policy area. Compared to foreign office officials who have diplomatic experience, officials responsible for migration are relatively less exposed to international debates and negotiations.

⁵²³ Interview with Ukrainian Deputy Foreign Minister, ‘Minister: Ukraine is next for EU visa-free travel.’ *Euractiv*, 21 May 2010
<http://www.euractiv.com/en/east-mediterranean/diplomat-ukraine-next-eu-visa-free-travel-interview-494396>.

⁵²⁴ Steven Sterkx, “The External Dimension of EU Asylum and Migration Policy: Expanding Fortress Europe,” in *EU's global role: external policies of the European Union*, ed. Jan Orbie (Aldershot: Ashgate, 2008): 127.

⁵²⁵ Interview with Commission official, May 2010, Brussels.

The external dimension of migration policy, the Global Approach, could have several contradictions with respect to its development goals and migration goals.⁵²⁶ Bearing in mind their diverging perspectives, disagreements could occur in the course of policy-making between different DGs. These negotiations between diverging opinions should also take into account that the outcome should be considered as ‘agreeable’ by the Member States in the Council of Ministers (or by the European Parliament in case of co-decision).

5.2.4. The European Parliament

As outlined in the first part of this Chapter, the communitarisation in the area of EU migration policy has gradually increased the competences of the EP. Under the intergovernmental framework of Title VI of the TEU, introduced with the Maastricht Treaty, the European Parliament was not very effective. As defined under Article K(6), the involvement was limited to exchange of information. Following the Maastricht Treaty, the EP has established a committee to be responsible with its involvement in the area of the JHA. As presented in the first section, the ratification of the Amsterdam Treaty has gradually increased the legal competences of the EP.

The EP has acquired significant co-decision powers with the Council on migration and asylum policies from January 2005 onwards.⁵²⁷ As a result of its increasing powers in the decision making process, the EP has become a significant actor for member states to lobby with the aim of getting its support on issues that fall under co-decision procedures.⁵²⁸ Although the EP has become a significant actor with respect to the internal negotiations, the EP had limited influence with respect to the external dimension of immigration. The competences of the EP did not extend to the external

⁵²⁶ Christina Boswell, “Evasion, Reinterpretation and Decoupling: European Commission Responses to the ‘External Dimension’ of Immigration and Asylum,” *West European Politics* 31, no.3 (2008): 507.

⁵²⁷ The co-decision power of the EP is acquired for Title IV of Part Three of the EC with the Council Decision 2004/927/EC. Council of the European Union, “Council Decision of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty (2004/927/EC),” OJ L 396/45, December 31, 2004, accessed January 8, 2012 http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_396/l_39620041231en00450046.pdf.

⁵²⁸ Martin Westlake and David Galloway, “Other Council Preparatory Groups,” in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd (London: John Harper Publishing, 2006): 228-9.

dimension of migration until the entry into force of the Lisbon Treaty which has made the approval of the EP obligatory to conclude international treaties. The introduction of the financial instrument of the ENP (the ENPI) has increased the involvement of the EP in the course of the decision-making process.⁵²⁹

With respect to the internal decision-making of the EP, the role of the special committees is highly prominent.⁵³⁰ The responsibility with respect to the external dimension of migration includes two European Parliament parliamentary committees: (i) Civil Liberties, Justice and Home Affairs and (ii) Foreign Affairs. The Civil Liberties, Justice and Home Affairs (LIBE) Committee is mainly responsible with the internal dimension of the JHA issues due to its competences as outlined in the first section of the Chapter.⁵³¹ Although its role has been limited in the area of external dimension of migration in the course of the negotiations with respect to the eastern neighbours, the Lisbon Treaty has increased its role concerning the approval of international treaties. With the ratification of the Lisbon Treaty in 2009, the involvement of the committee with respect to the EU decision-making concerning the visa dialogues with the eastern neighbours has increased.⁵³² The contacts of the European Commission with the LIBE committee have increased due to the increased competences of the EP. Due to its traditional liberal and pro-mobility approach of the EP, the committee has favoured the intensification of the mobility with respect to the citizens of the eastern neighbours. In addition to the LIBE committee, the Foreign Affairs committee that has a responsibility with respect to the relations with the eastern neighbours in the framework of the ENP and the Eastern Partnership. Due to its regional competence, the Foreign Affairs committee has become involved in the area of migration (particularly visa negotiations).⁵³³

⁵²⁹ Interview with AFET Committee member, May 2009, Brussels.

⁵³⁰ David Judge and David Earnshaw, (2008) *The European Parliament* Houndmills: Palgrave Macmillan, 167.

⁵³¹ Emilio De Capitani, "The evolving role of the European Parliament in the AFSJ," In *The Institutional Dimension of the European Union's Area of Freedom, Security and Justice*, ed Joerg Monar (Brussels: Peter Lang, 2010): 113-44.

⁵³² Interview with an EP official, February 2011, Brussels.

⁵³³ Ibid.

5.3. Chapter Conclusions

This chapter outlines the ways in which the impact of the EU institutions on decision-making process is assessed in the thesis. It focuses on two levels: (1) legal dimension and (2) institutional dimension. As shown the first section of the Chapter, the Member States have been increasingly constrained due to the legal framework in the area of migration. Since the ratification of the Amsterdam Treaty, the competences of the EU institutions have increased. As shown with the analysis on the Lisbon Treaty, the unanimity requirement is abolished with respect to all four case study areas. Among the four case study areas, the visa cooperation has been highly communitarised due to the Schengen cooperation. The constitutional constraints on the Member States with respect to decision-making process have been high in the area of visa policy due to the QMV requirement. Moreover, the institutions have strong competences in the area of visa policy. Although the role of the EP has been limited with respect to the external dimension of migration, the Lisbon Treaty has increased the legal competences of the EP with the introduction of the ‘consent requirement’. As shown in the Chapter, labour migration has traditionally been the least communitarised policy area in the area of migration. The Member States kept their veto power with respect to labour migration due to the salience of the topic at the domestic level. The Lisbon Treaty has abolished the unanimity requirement in the area of legal migration. However, the Member States still have full competence with respect to the determination of the volumes of migration.

After conducting a legal framework analysis, the Chapter also looked at the institutional dynamics within the four decision-making institutions. The analysis conducted in the second part of the Chapter demonstrated that the institutional dynamics create their own constraints in addition to the legal framework. Although the Council of the EU has been known as the ‘intergovernmental’ institution of the EU, the analysis showed that there is a pressure on the Member States to ‘compromise’ rather than ‘hard bargaining’ in the Council. The compromised decision-making has been mainly a characteristic of low-politics issues. The area of migration has been largely considered a high-politics area. The intergovernmental circles of the justice and home affairs officials have traditionally been highly significant in the course of decision-making. However, the analysis

displayed that the ENP structure challenged the dominance of the JHA officials in the course of the decision-making. The ENP has given the external relations policy actors increased coordination competences.

CHAPTER 6: The Migration Policy Instruments towards the Eastern Neighbours

Introduction

After providing the legal and institutional framework of the external dimension of the EU's migration policy in the previous Chapter, this Chapter deals with the actual policy instruments that have been in place with respect to the eastern neighbours. The Chapter looks at the extent to which the EU institutions are able to influence the EU decision-making focusing on the four sub-areas of immigration policy by tracing the progress regarding their development. First, it deals with the readmission agreement negotiations as part of the irregular migration cooperation with the eastern neighbours. Second, the Chapter looks into the cooperation with the eastern neighbours in the area of visa facilitation and visa liberalisation. Third, the labour migration dimension that is put forward within the Mobility Partnerships is discussed. Lastly, the Chapter analyses the decision-making process concerning the evolution of the external dimension of EU's asylum policy focusing on the Regional Protection Programmes. Mapping out the development and decision-making processes with respect to the four case study areas, the chapter aims to analyse the degree to which they have been subject to institutional influence.

6.1. Irregular Migration: Readmission Agreements

Over recent decades, there has been a growing consensus regarding integrating migration cooperation into the broader external relations of the EU.⁵³⁴ Cooperation with the eastern neighbouring states, particularly with respect to the return of irregular migrants, has become a priority for the EU after the EU enlargement. Within the framework of the ENP cooperation, Ukraine and Moldova signed EC readmission agreements as part of the package deal with a short-term travel visa facilitation agreement in 2007.⁵³⁵ Both agreements were concluded under the Amsterdam Treaty

⁵³⁴ Council of the European Union, "Presidency Conclusions. Seville, 21 and 22 June 2002," 13463/02, 2002, accessed January 1, 2012, <http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002&bid=76&lang=en&id=>.

⁵³⁵ Council of the European Union, "Council Decision of 29 November 2007 concerning the conclusion of the Agreement between the European Community and Ukraine on readmission of persons" OJ L 332/46, December 18, 2007, accessed January 1, 2012. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0046:0047:EN:PDF>;

legal basis and decision-making procedures. Due to the EU decision to suspend bilateral relations with Belarus as a result of the undemocratic regime in place, the start of the readmission agreement negotiations was delayed until the end of 2010. In November 2010, the Commission asked the Council for a mandate to negotiate an EC readmission agreement with Belarus. The negotiation mandate was approved by the Council in February 2011.⁵³⁶ As in the case of Ukraine and Moldova, the readmission negotiations between the EC and Belarus are coupled with visa facilitation negotiations to enhance mobility channels for the citizens of Belarus.⁵³⁷ Due to the incomplete negotiations and uncertainties regarding the process in relation to Belarus, this section evaluates the EU decision-making process in the area of readmission of undocumented migrants mainly focusing on Ukraine and Moldova.

Since the late 1990s, the conclusion of readmission agreements with third countries has become a traditional policy instrument for the EU. Initial agreements were concluded among the Member States and with the candidate countries for EU accession as a requirement for membership. At the Tampere (1999) and Laeken European Councils (2001), the Member States highlighted the need for the enhancement of an external dimension to the EU's migration policy. The Council conclusions particularly pointed at the then upcoming borders of the EU in the aftermath of the eastern enlargement and the conclusion of readmission agreements. Building on the outcome of the Laeken European Council, at the European Council meeting that took place in Seville in 2002 the Member States agreed that '(A)ny future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.'⁵³⁸ Particularly the old Member States that have been subject to high levels of irregular migration have been

Council of the European Union, "2007/826, Council Decision of 22 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation," OJL 334/148, December 19, 2012, accessed January 1, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0148:0148:EN:PDF>.

⁵³⁶ Council of the European Union, "Council Decision authorising the Commission to open negotiations for the conclusion of a readmission agreement between the European Union and Belarus" 6623/11, 5 May 2011.

⁵³⁷ Council of the European Union, "Council Conclusions on Belarus," 11860/11, 20 June 2011.

⁵³⁸ Council of the European Union, "Presidency Conclusions. Seville, 21 and 22 June 2002," 13463/02, 2002, accessed <http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002&bid=76&lang=en&id=>.

highly concerned about the eastern neighbourhood of the EU as a source of and transit for irregular migration.⁵³⁹

In line with the growing importance attached to cooperation with the countries of origin or transit for irregular migration, the ENP Action Plans for Moldova and Ukraine identified the prompt conclusion of readmission agreements as one of the ‘priorities for action’.⁵⁴⁰ Due to its size and the long shared border with the enlarged EU, Ukraine has been the main priority for the Member States among the WNIS to cooperate against irregular cross-border movements.

The EU and Ukraine cooperation in the area of justice and home affairs has started with the Common Strategies cooperation.⁵⁴¹ The European Council Common Strategy on Ukraine, adopted in December 1999 under the CFSP cooperation, underlined the importance of the cooperation with Ukraine in the area of irregular migration. The European Council has proposed Ukraine to improve ‘cooperation regarding the readmission of own nationals, persons without nationality and third country nationals, including the conclusion of a readmission agreement’ as a part of the JHA cooperation.⁵⁴² After an evaluation following the adoption of the Common Strategies in December 2001, an exclusive Action Plan on the justice and home affairs area was adopted between the EU and Ukraine under the terms of the Partnership and Cooperation Agreement.⁵⁴³ Ukraine was the only ENP country that the EU had a specific JHA Action Plan. The 2001 Justice and Home Affairs Action Plan identified irregular migration cooperation as the main priority area of cooperation.

⁵³⁹ European Commission, “Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours,” COM (2003) 104, 11 March 2003.

⁵⁴⁰ European Commission, “EU/Ukraine ENP Action Plan 2004”; (adopted 21 February 2005); European Commission, “EU/Moldova ENP Action Plan 2004”. (adopted 22 February 2005).

⁵⁴¹ Council of the European Union, European Council Common Strategy of 11 December 1999 on Ukraine (1999/877/CFSP) OJL 331/1, 23 December 1999.

⁵⁴² Ibid.

⁵⁴³ Council of the European Union, EU Action Plan on Justice and Home Affairs in Ukraine (Text approved by the Council on 10 December 2001) OJ C 77/01, 29 March 2003. Ukraine was the only ENP country that the EU had a specific JHA Action Plan.

In the framework of the justice and home affairs cooperation, the Commission asked the Council to have a mandate to start readmission agreement negotiations with Ukraine in 2001. The mandate was given by the JHA Council in June 2002 authorizing the Commission to start negotiations.⁵⁴⁴ Despite the negotiation mandate, the European Commission could not manage to conclude a prompt agreement with Ukraine due to lack of incentives for the Ukrainian side. It is evident that readmission agreements predominantly serve the interests of the EU member states due to the migratory pressures to the EU rather than the partner countries. The lengthy negotiation processes have shown that it is highly challenging to convince partner countries to sign a readmission agreement without offering substantial incentives in return. It was particularly challenging for the European Commission as the main negotiator for the EU. The main policy preference of the European Commission was to deliver a successful agreement regarding EU level readmission agreements with partner countries. This was mainly related to the fact the Member States were losing their confidence in EU level agreements due to lengthy processes.⁵⁴⁵ Among the Member States that are analysed, Germany in particular has been subject to high levels of irregular migrants from Ukraine. Moreover, the other Member States were also concerned as Ukraine was identified as a major transit for irregular migrants to the Schengen zone and also the UK due to the limited border management capacity. As shown in Chapter 4 on the policy preferences of the Member States, there is a high consensus among the Member States with respect to the need for increased cooperation on the issue of readmission agreements.

The Commission convinced the Member States to develop incentives for the partner countries by proposing a package deal that combined readmission and visa facilitation agreements for the eastern neighbours. The Commission's task was much harder in the Mediterranean as the partner countries were not inclined to cooperate with the EU as much as the eastern neighbours like Ukraine or Moldova. The limited room for

⁵⁴⁴ The Decision is agreed at the COREPER level. Council of the European Union, "2436th meeting of Council of the European Union (Justice and Home Affairs and Civil Protection) - Addendum 1 to List A Items," 982/02 ADD 1, June 12, 2002 (13.06), accessed January 8, 2012 <http://register.consilium.europa.eu/pdf/en/02/st09/st09825-ad01.en02.pdf>.

⁵⁴⁵ Annabelle Roig and Thomas Huddleston, "EC Readmission Agreements: A Re-evaluation of the Political Impasse," *European Journal of Migration and Law* 9 (2007): 373.

cooperation in the eastern Mediterranean paved the way for readmission agreements that are concluded informally at the national level among some member states and their partners in the southern neighbourhood.⁵⁴⁶ These developments side-lined the European Commission regarding the negotiations with the southern neighbours.

The visa facilitation offer was a substantial incentive both for Ukraine and Moldova. The governments of the partner countries wanted to justify their pro-EU attitude at the domestic scene by getting a better deal regarding short-stay visas in exchange of readmission obligations. Prepared by the European Commission, the ENP Country Report (2004) on Ukraine also confirmed the offer of a package deal that incorporated readmission agreement and visa facilitations negotiations.⁵⁴⁷ The package deal unquestionably accelerated the conclusion of the readmission negotiations. An agreement was signed with Ukraine in June 2007 and it entered into force in January 2008.⁵⁴⁸ The combined readmission and visa facilitation negotiation was also offered to Moldova and a mandate for the EC-Moldova readmission agreement negotiations was approved by the Council in December 2006. An agreement was rapidly reached between the EU and Moldova in October 2007 taking effect in January 2008.⁵⁴⁹

As detailed in the Action Plans⁵⁵⁰ with Ukraine and Moldova, the EU considers readmission agreements between the EU and the neighbouring partners as a vital step towards further cooperation to fight against irregular migration. Given the limited resources at the disposal of the EU's partnering countries in the east, readmission agreements were met with opposition due to the technical as well as material investment

⁵⁴⁶ Jean-Pierre Cassarino, "Beyond Asymmetries: Cooperation on Readmission in the EU neighbourhood" (paper presented at the EUSA Twelfth Biennial International Conference, Boston, Massachusetts, March 3-5, 2011): 8-9. accessed January 1, 2011 http://euce.org/eusa/2011/papers/3b_cassarino.pdf.

⁵⁴⁷ European Commission, "European Neighbourhood Policy-Country Report- Ukraine," COM (2004) 373 final, May 12, 2004.

⁵⁴⁸ Council of the European Union, "Council Decision of 29 November 2007 concerning the conclusion of the Agreement between the European Community and Ukraine on readmission of persons' OJ L 332/46, December 18, 2007, accessed January 1, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0046:0047:EN:PDF>.

⁵⁴⁹ Council of the European Union, "2007/826, Council Decision of 22 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation," OJL 334/148, December 19, 2012, accessed January 1, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0148:0148:EN:PDF>.

⁵⁵⁰ European Commission, "EU/Ukraine ENP Action Plan, 2004 (adopted 21 February 2005); European Commission, "EU/Moldova ENP Action Plan, 2004 (adopted on 22 February 2005).

that they necessitate. The partnering countries do not have the required resources to comply with the needs of effective border control to limit irregular cross border activities and the demands of the agreements put additional pressure on the already limited financial resources and infrastructure. Keeping in mind these limitations, the EU committed itself to provide the necessary technical and financial assistance to its partners to comply with the requirements detailed in the readmission agreements and Action Plans. With the aim of reducing irregular migration pressure and enhancing Ukraine's capacity to deal with undocumented migrants, the EU assistance included border management capacity improvement.⁵⁵¹ The EU paid particular attention to the Ukraine-Moldova border to bring down cross-border illicit activities. In 2005, a special EU border assistance mission was initiated to provide technical assistance to Ukraine and Moldova.⁵⁵²

The readmission agreements signed by Ukraine and Moldova have formed the basis for cooperation in other bilateral agreements between EU and ENP partner countries. In the Council, there was a broad consensus regarding putting readmission agreements as a priority. The focus of the EU cooperation has traditionally been on limiting 'unwanted' immigration. This is particularly supported by the older member states in which migration is domestically a significant and politicised issue. It is considered that the leverage of the EU as a whole is higher compared to negotiating the agreements concerning readmission agreements at the bilateral level.⁵⁵³

⁵⁵¹ Following the readmission agreement and the signing of the Action Plan, the EU has offered EUR 35 million aid for 'Readmission-related assistance (Improving infrastructure and capacity to deal with irregular migrants and to reduce irregular migration flows through Ukraine) and EUBAM-flanking measures (Support to the implementation of EUBAM recommendations)'. The aim of the assistance was infrastructure and capacity development for temporary retention and custody facilities in Ukraine and enhancing the control capacity of the border between Ukraine and Moldova.

European Commission, "Commission Decision on the ENPI Annual Action Programme 2007 in favour of Ukraine to be financed under Article 19 08 01 03 of the general budget of the European Communities (Annex II)", Action Fiche for Readmission Related Assistance and EUBAM-flanking Measures, accessed January 8, 2012 http://ec.europa.eu/europeaid/documents/aap/2007/ec_aap-2007_ua_en.pdf.

⁵⁵² See EU Border Assistance Mission to Moldova and Ukraine <http://www.eubam.org/>.

⁵⁵³ Interview with Member State official A, May 2009, Brussels

6.2. Visas: Visa Facilitation and Liberalisation

In the framework of the ENP and the Eastern Partnership, the EU has established intense cooperation and regular bilateral dialogue with the WNIS partners in the area of visa policy. This case study addresses two subsequent developments in the course of the negotiations. Firstly, the visa facilitation agreements are evaluated given that the negotiations evolved around the adoption of certain concessions to ease the procedures and reduce the costs of obtaining a Schengen visa for the nationals of the WNIS. The cooperation with Ukraine and Moldova regarding the facilitation of the conditions for obtaining a Schengen visa has evolved tightly conditioned to the irregular migration cooperation.⁵⁵⁴ Although the primary emphasis of the EU was on fighting against irregular migration in cooperation with its eastern neighbours, the lengthy readmission agreement negotiations between the EU and the partners proved that it was challenging to convince them to take responsibility regarding irregular migration management. The EU visa facilitation agreements could be considered as ‘foreign policy tools’ to be offered accompanying readmission agreements, to create incentives for third countries to agree to a readmission agreement.

Secondly, the section is concerned with the abolition of the visa requirement for the citizens of Ukraine and Moldova.⁵⁵⁵ Although visa facilitation and visa liberalisation have been interlinked, the policy motivations and negotiations have been very different. Visa facilitation are instruments of compromise to sign readmission agreements with modest mobility facilitation concessions offered to third countries in return. On the other hand, visa liberalisation concerns the broad EU policy towards the region. Yet, the negotiations that started with visa facilitation have paved the way for further dialogue on abolishing the visa requirement for Ukraine and Moldova.

⁵⁵⁴ Sandra Lavenex, “EU external governance in ‘wider Europe’,” *Journal of European Public Policy* 11 no. 4 (2004): 680-700.

⁵⁵⁵ As the process towards the conclusion of readmission and visa facilitation negotiations with Belarus has started in early 2011, the visa liberalisation section does not concern the policy towards Belarus.

Visa Facilitation as an incentive for readmission agreements: the case of Ukraine and Moldova

The visa requirement for short-term travel has become a particularly topical issue for the WNIS following the eastern enlargement. The CEE countries, which had a long legacy of visa free regime towards the WNIS since the end of the Cold War, had to align their visa policies with the EU to comply with the EU acquis.⁵⁵⁶ The importance of improving the procedures and reducing the costs for obtaining Schengen visas has increased for the governments of the partner countries.⁵⁵⁷ In view of the extended negotiations regarding the conclusion of the readmission agreements, the EU has offered its immediate eastern neighbours visa facilitation agreements as a concession in return for their cooperation in the readmission of undocumented migrants.

The agreements on readmission and visa facilitation were signed with Ukraine and Moldova in 2007.⁵⁵⁸ The visa facilitation agreements have brought about a number of measures to ease the process and cost of acquiring short-term visas. The EU has maintained its practice of pairing of the readmission and visa facilitation negotiations in the case of Belarus as well. Despite the facilitated travel, the ultimate target for Ukraine and Moldova has remained the abolition of visa requirement for their nationals. In line with the importance attached to enhancing cross-border mobility between the EU and its neighbours by the governments of the partner countries and some of the EU member states, further dialogue and cooperation for further liberalisation of the EU visa regime

⁵⁵⁶ Heather Grabbe, "The Sharp Edges of Europe: Extending Schengen Eastwards," *International Affairs* 76, no.3 (2000): 528; Jan Zielonka, *European Unbound: Enlarging and reshaping the boundaries of the European Union*, (Taylor and Francis e-Library, 2003): 10.

⁵⁵⁷ Euractiv Interview with the Ukrainian Foreign Minister: "Foreign Minister: Bridges symbolise change for Ukrainians" (15 December 2010) (updated 12 September 2011), Euractiv, accessed January 9, 2012 <http://www.euractiv.com/east-mediterranean/foreign-minister-bridges-symbolise-change-ukrainians-interview-500613>. It should also be noted that the Ukraine-EU Association Agenda puts forward visa cooperation as a priority. The Moldavian government has identified visa liberalisation as a priority for their European Integration Programme (2011-2014). Government of Moldova, Activity Program-European Integration: Freedom, Democracy, Welfare 2011-2014, accessed January 8, 2012 <http://www.mfa.gov.md/work-program-en/>.

⁵⁵⁸ Council of the European Union, "Agreement between the European Community and Ukraine on the facilitation of the issuance of visas - Protocol - Declaration - Joint Declarations," Official Journal L 332/68, December 18, 2007, accessed January 1, 2012

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1218%2802%29:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1218%2802%29:EN:HTML;); Council of the European Union, "Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas," OJ L 334/169, December 19, 2007, accessed January 1, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1219%2811%29:EN:HTML>.

vis-a-vis its eastern neighbours started.

The European Commission is the negotiator on behalf of the EU for the EC readmission agreements since the ratification of the Amsterdam Treaty. In view of the slow negotiations, as discussed in the previous section on the readmission agreements, the Commission pushed the Member States with the aim of creating incentives for partner countries to take responsibility regarding the return of undocumented migrants. In line with the increasing importance of cooperation with third countries regarding irregular migration in the EU, the Conclusions of the June 2003 European Council meeting in Thessaloniki stated that cooperation with third countries on migration should be considered as ‘a two-way process’ which includes both fighting against irregular migration and consideration of opening up legal migration routes.⁵⁵⁹ Since 2004, there has been a broad agreement at the EU level regarding combining readmission agreements with short-term visa facilitation agreements. In November 2004, the European Council approved the Hague Programme providing further ‘political mandate’ to the facilitation of short-term visas to third-country nationals as part of the readmission agreement negotiations. The Hague Programme underlined the possibility of coupling the EU readmission agreement with the facilitation of ‘the issuance of short-stay visas to third country nationals, where possible and on basis of reciprocity, as part of a real partnership in external relations including migration-related issues.’⁵⁶⁰ These agreements were particularly considered instruments to accelerate the readmission agreement negotiations.

For a number of eastern neighbours including Ukraine and Moldova, the readmission agreements were coupled with facilitation of short-term travel. Due to the reluctance of the member states to make any binding commitments concerning adopting a visa-free regime, an exploratory dialogue phase regarding further cooperation on mobility was the second step in the aftermath of the conclusion of visa facilitation agreements. The visa dialogue process paved the way for the adoption of visa liberalisation Action Plans

⁵⁵⁹ Council of the European Union, “Thessaloniki European Council 19 and 20 June 2003 Presidency Conclusions,” 11638/03, October 1, 2003, accessed January 1, 2012

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf.

⁵⁶⁰ Council of the European Union, “*The Hague Programme: strengthening freedom, security and justice in the European Union*,” OJC 531 March 3, 2005.

for Ukraine and Moldova. The negotiations concerning the facilitation of short-stay visas started in line with the readmission agreement negotiations for both Ukraine and Moldova.⁵⁶¹ The negotiations with Belarus have been following the same pattern as Ukraine and Moldova. With the facilitation agreement, a reduction in the short-stay visa costs from 60 EUR to 35 EUR was introduced for applicants from Ukraine and Moldova.⁵⁶² Other measures include granting visa fee-free travel to certain groups of Ukrainian citizens (close relatives, students, disabled people, journalists and pensioners) and issuing multiple-entry visas (lorry drivers, people on business, students, journalists and members of official delegations). Moreover, procedures (such as lessening the documents needed for visa application) are alleviated and the duration for a visa application to be processed is reduced. With respect to work permits, commitments are made for highly skilled migrants, seasonal workers from partnering countries as well as permits for training purposes.

The readmission agreements are geared towards shifting the burden of combating irregular migration to the partner countries and towards the end goal of strengthening immigration management. However, these approaches failed to be productive given the unwillingness of the third countries to commit themselves to readmission agreements.⁵⁶³ Among the 18 negotiation mandates that the Council has given to the Commission, only 13 of them are concluded and entered into force.⁵⁶⁴ In its 2011 Communication on the

⁵⁶¹ Council of the European Union, "Agreement between the European Community and Ukraine on the facilitation of the issuance of visas - Protocol - Declaration - Joint Declarations," Official Journal L 332/68, December 18, 2007, accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1218%2802%29:EN:HTML>;
Council of the European Union, "Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas," OJ L 334/169, December 19, 2007, accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1219%2811%29:EN:HTML>.

⁵⁶² Ibid.

⁵⁶³ A recent evaluation of the EU Readmission Agreements is available at:

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-003323&language=EN>.

⁵⁶⁴ The readmission agreement that are in force are Hong Kong and Macao (2004), Sri Lanka (2005), Albania (2006), Russia (2007), Ukraine (2008), the former Yugoslav Republic of Macedonia (2008), Bosnia and Herzegovina (2008), Montenegro (2008), Serbia (2008) and Moldova (2008), Pakistan (2010) and Georgia (2011). With Morocco, Turkey and Cape Verde, the readmission agreement negotiations have started and not concluded despite several rounds of meetings. For example, the Council has given the European Commission the mandate to negotiate a readmission agreement with Morocco in 2000. The Commission was only able to start the formal negotiations in 2003 and the negotiations are still continuing. With China and Algeria, the negotiations have not formally started yet despite the Council mandate.

Evaluation of the Readmission Agreements⁵⁶⁵, the Commission has pointed at the fact that the negotiation process has been very lengthy for the majority of readmission agreements.⁵⁶⁶ As noted in its Communication, the Commission has underlined that the processes for Ukraine and Russia readmission agreements have gathered speed when the EU offered visa facilitation negotiations in return. With respect to Moldova, the process of readmission and visa facilitation negotiations simultaneously started leading to relatively fast negotiations. Visa facilitation has encouraged Moldova to agree to a readmission agreement.

The Commission has put pressure on the Member States to offer ‘compensatory measures’ to partner countries to make them agree to readmission agreements. Examples of the measures are defined in a Commission Communication following the Thessaloniki European Council: ‘more generous visa policy with respect to the co-operating countries or increased quotas for migrant workers, closer economic co-operation, trade expansion, additional development assistance, better market access or WTO compatible tariff preferences are demands often mentioned as areas where greater generosity is expected from the EU and its Member States in order to lead to more progress in the negotiations.’⁵⁶⁷ Seeing the delays in relation to the readmission negotiations, the member states responded to the calls from the Commission. The Presidency Conclusions of the November 2004 referred to the possibility to offer visa facilitation as one of the external relations instruments of the EU while negotiating with third countries. As it was underlined in the ENP ‘Wider Europe’ Communication of the Commission, the neighbourhood of the EU is very significant for the EU to conclude readmission agreements.⁵⁶⁸ Although the visa facilitation was not clearly put in the ENP documents, the ENP also underlined the need for enhancing mobility between the neighbouring countries.

⁵⁶⁵ European Commission, “Evaluation of EU Readmission Agreements,” COM (2011) 76 final, February 23, 2011.

⁵⁶⁶ As also noted by the European Commission, relatively fast negotiations were only concluded with the Western Balkan states, Moldova and Georgia.

⁵⁶⁷ European Commission, “Communication in view of the European Council of Thessaloniki on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents,” COM (2003) 323, June 3, 2003.

⁵⁶⁸ European Commission, “Wider Europe–neighbourhood: a new framework for relations with our eastern and southern neighbours”, COM (2003) 104 final, 2003, accessed 01/01/12, http://ec.europa.eu/world/enp/documents_en.htm.

As in the case of readmission agreements, the negotiations with Ukraine and Moldova were conducted under the pre-Lisbon procedures regarding the conclusion of international agreements. The agreements were adopted after consulting the European Parliament. In line with its support to enhancing mobility between the EU and eastern neighbours, the European Parliament has welcomed the coupling of readmission negotiations and concessions regarding short-term visas and approved the visa liberalisation agreements with Ukraine and Moldova.⁵⁶⁹

The visa liberalisation concessions were considered as necessary for the EU to be able to conclude readmission agreements with third countries, as the conclusion of readmission negotiations with the neighbours has been highly important for the EU to fight against irregular migration. However, the negotiations concerning the liberalisation of the short-stay visas have become more challenging.

Negotiations regarding the ‘long-term goal’ of visa liberalisations

Visa liberalisation has become an important dimension of the ENP – and later the Eastern Partnership – negotiations. The EU policy on visa liberalisation for Ukraine and Moldova has developed in two stages. The first stage is a ‘visa dialogue’ stage between the EU and Ukraine and Moldova. The visa dialogue broadly entails the investigation of the ‘state of play’ in the neighbouring countries and the steps that should be taken to reach the ‘long term goal’ of visa liberalizations.⁵⁷⁰ The European Commission was responsible for closely observing the situation in the partner countries. The ‘visa dialogue’ stage was followed by the main ‘operational phase’ after a consensus was reached within the EU. This operational stage has brought about the adoption of the Action Plans for Ukraine and Moldova giving guidance to the partner countries through setting specific benchmarks.

⁵⁶⁹ European Parliament, “Legislative resolution of 13 November 2007 on the proposal for a Council decision on the conclusion of the Agreement between the European Community and Ukraine on the facilitation of issuance of short-stay visas (COM(2007)0190 - C6-0187/2007 -2007/0069(CNS)),” P6_TA(2007)0493; European Parliament, “Legislative resolution of 13 November 2007 on the proposal for a Council decision on the conclusion of the Agreement between the European Community and Republic of Moldova on the facilitation of issuance of short-stay visas (COM(2007)0488 - C6-0339/2007 2007/0175(CNS)),” P6_TA(2007)0495. Interview with a member state representative, September 2010, Brussels.

⁵⁷⁰ Interview with a member state representative, September 2010, Brussels.

The issue of visa-free travel was one of the difficult issues during the Eastern Partnership negotiations. In view of the declining interest of the eastern neighbours in the ENP (Ukraine in particular), it was acknowledged in the EU that the new policy proposal on the Eastern Partnership should be appealing for the partner countries. In its draft proposals, the European Commission has offered migration related policy tools that are in line with the EU's external immigration policy (i.e. the Global Approach to Migration framework).⁵⁷¹ During the drafting period of the Eastern Partnership proposal, the old member states in particular (such as Germany and France) have found the European Commission's draft proposals too ambitious with respect to migration issues. Despite the importance of visa related concessions for the governments of the neighbouring countries, they were reluctant to grant visa free travel to the Schengen zone without attaching strong conditions.⁵⁷²

Although the Eastern Partnership did not significantly alter the existing ENP framework with respect to bilateral relations of the EU with its eastern neighbours on the issue of migration cooperation, it has further underlined the need for enhanced cooperation concerning immigration and cross-border mobility. Due to the lack of a consensus among the Member States concerning how the EU should facilitate mobility with respect to its eastern neighbourhood, the commitments that were made during the Eastern Partnership agreement could be considered as limited. The Joint Declaration of the Prague Summit on the Eastern Partnership used an open-ended language. It was asserted that 'gradual steps towards full visa liberalisation as a long term goal for individual partner countries on a case-by-case basis provided that conditions for well-managed and secure mobility are in place' will be taken, without giving a clear prospect to its partners about visa liberalisations.

The ENP and the Eastern Partnership stress the broader reconciliation of the security and external relations objectives of the EU with respect to its immediate eastern neighbourhood. The EU level debates have been centred around the security concerns that are perceived with respect to further liberalisation of mobility as well as the geopolitical implications of the EU level agreement regarding the way the visa

⁵⁷¹ Interview with EU official A, March 2009, Brussels.

⁵⁷² Interviews with EU officials and member state representatives, March-May 2009, Brussels.

facilitations steps should be taken. It is important to stress that the EU's visa requirements with respect to third countries is determined not only based on considerations related to the threat of irregular migration and security risks but also by “the European Union's external relations with third countries”, taking into account “the implications of regional coherence and reciprocity”.⁵⁷³

As indicated in Chapter 4, the policy preferences of the Member States diverge considerably on the issue of visa policy with respect to the WNIS region. Although the visa dimension has gained considerable attention in the course of the ENP and the Eastern Partnership dialogues due to its importance for the partner countries, the old Member States have been highly cautious regarding their commitments with respect to the issue of visas. With respect to security concerns, the Member States that have had concerns related to irregular immigration from the region, Germany in particular, have been reluctant to make binding commitments with respect to visa free travel. The divisions regarding policy preferences could be observed at the domestic level as well. The Ministry of Interior (who traditionally has a stronger hand on the policy) has adopted a rather technical approach with respect to the level of border and document security in the neighbouring countries. The Ministry of Interior officials have been less in favour of the removal of restrictions with respect to travel given the irregular migration and other illicit cross-border risks emanating from the region. On the other hand, the German Federal Foreign Office has a rather liberal approach with respect to taking steps towards granting visa free travel to the nationals of the eastern neighbours in line with the further development of relations with the region. Although France has not been subject to high levels of irregular migration from the region, it has been lukewarm towards further liberalisation of mobility for the WNIS region.

As the UK does not take part in the Schengen agreement, the visa facilitation agreement does not have a direct effect on the entry conditions to the UK territory. However, Poland and Sweden have adopted a liberal approach towards visa negotiations. The enhancement of cross-border mobility particularly has become an important issue in line

⁵⁷³ Council of the European Union, “Council Regulation (EC) No 539/2001 of 15 March 2001,” OJ L 81, March 21, 2001, accessed January 8, 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>.

with the accession of the CEE countries to the EU. The visa requirements have been criticized due to ‘creating dividing lines’ in the continent following the eastern enlargement. As the owners of the Eastern Partnership proposal, Poland and Sweden aimed for putting concrete proposals on the visa liberalisation front to show the EU’s commitment to the further development of the relations with the region without attaching several conditions.

Although the Eastern Partnership is a non-binding political document, it has intensified the debate regarding liberalisation and has paved the way for further discussions on whether the EU should move Ukraine and Moldova to the Schengen positive list. The process has started with a visa dialogue administrated by the European Commission. The role of the European Commission was significant at the visa dialogue stage as it was the main actor that had the responsibility and resources to closely monitor the situation in the neighbouring countries. The role of the Commission was also significant taking into account its role to prompt member states for reaching a political agreement with respect to proceeding to an ‘operational phase’ and settling the details of how the EU should develop and progress its policy towards the countries in the eastern neighbourhood following the visa dialogues. The Commission was also prompted by the Member States, Poland and Lithuania in particular, that have been in favour of moving to the operational stage.⁵⁷⁴

The EU policy on short-term visas has been communitarised to a great extent. In the Council, the EU decisions concerning the list of countries whose nationals must be in possession of Schengen visas when crossing the external borders and those whose nationals are exempt from that requirement are taken by qualified majority voting (Article 77(2)(a) TFEU). As the Member States do not have a veto power, they had to develop a common decision. Broader geopolitical priorities of the member states with respect to the region were central during the debate particularly for member states that have varying foreign policy priorities in the region. Although Russia is not a part of the ENP and the Eastern Partnership, the discussion also involved Russia given that there has been a parallel process with respect to EU negotiations concerning the visa debates

⁵⁷⁴ Interview with EU officials E, February 2011, Brussels.

with Russia, Ukraine and Moldova. Member States diverge with respect to the countries that the EU should launch negotiations concerning visa liberalisations. The negotiations among the EU member states with respect to visa liberalisations reflected their diverging foreign policy priorities. It was understood that their diverging regional preferences (i.e. Russia vs. WNIS) should be balanced. During the Council negotiations in the first half of 2010, France was particularly interested in starting the visa liberalizations negotiations with Russia as opposed to others, such as new Member States that traditionally prioritize relations with Ukraine and Moldova. France particularly prioritized the broader geopolitical interest vis-a-vis Russia over the security-focused concerns of JHA officials with respect to migratory pressures to the EU.⁵⁷⁵ The change concerning the viewpoint of France on the issue could be observed if compared with the reluctant support given concerning visa liberalisations during the EU-Ukraine Summit in the course of French Presidency in 2008.⁵⁷⁶

On the other hand, the consensus-building has been highly important despite the decision-making rules. As indicated by an interviewee, the decision in the Council regarding moving to the operational stage was taken without actual voting.⁵⁷⁷ Considering the political weight of the negotiations, the role of the COREPER who has a horizontal competence with respect to Council negotiations (regarding reaching a deal during the negotiations) was highly significant.⁵⁷⁸ The EU negotiations concerning starting 'the operational phase' of the visa liberalisation process with the eastern neighbours has paved the way for a political agreement that balances particularly the foreign policy priorities of different actors in the EU in the eastern neighbourhood. In the EU-Russia Summit that was held in Rostov-on-Don in June 2010, it is declared that the EU and Russia will move towards visa liberalisation 'based on a step-by-step approach'.⁵⁷⁹ A parallel approach is adopted with respect to Ukraine as indicated in the EU-Ukraine Cooperation Council meeting in June 2010 in Luxembourg.⁵⁸⁰ According

⁵⁷⁵ Interview with Member State official G, September 2010, Brussels.

⁵⁷⁶ Council of the European Union, "EU-Ukraine Summit, Paris, 9 September 2008," 12812/08 (Presse 247), September 9, 2008.

⁵⁷⁷ Interview with Member State official G, September 2010, Brussels.

⁵⁷⁸ Ibid.

⁵⁷⁹ "EU and Russia launch new partnership for modernization," EU Press Release, IP/10/649, June 1, 2010, accessed January 8, 2012 <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/649>

⁵⁸⁰ "EU Ukraine Cooperation Council 14th meeting," EU Press Release, 11102/10 Presse 181,

to the conclusions of the JHA Ministerial meeting, the process will be based on a two-level Action Plan for Ukraine to realize the necessary steps. Negotiations with other neighbouring countries in the region (such as Moldova and Georgia) are also expected to follow the similar gradual model that is agreed with respect to Russia and Ukraine.

In line with its liberal approach towards increased mobility, the European Parliament has been supportive of visa liberalisations toward Ukraine and Moldova. The European Parliament supported further development of the tools of the Global Approach to Migration in relation to the Eastern Partnership.⁵⁸¹ As an official put it ‘the EP normally plays the role of political facilitator and tries to accelerate the process giving it a political dimension’.⁵⁸² The EP resolutions have continuously called for the Council to start the process for visa liberation and also abolish the visa costs for national visas as an interim stage.

6.3. Labour Migration: Mobility Partnerships

As mentioned in the previous Chapter, the EU has acquired the competence to adopt measures in relation to labour migration with the introduction of Title IV of the TEC (on visas, asylum, immigration and other policies related to free movement of persons) in 1999. Not being subject to the five-year transition period commitment (regarding unanimity and co-decision) as opposed to the other case study policy areas that are dealt with in this thesis, labour migration has been the least harmonized area within the EU’s migration policy. Dismissing the Commission’s ambitious proposal on the adoption of a comprehensive EU level labour migration policy in 2001, the Member States since then have shown reluctance with respect to developing an ambitious labour migration policy at the EU level.⁵⁸³ In 2005, the European Commission has adopted a sectoral approach and pushed for a modest policy proposal focusing on certain categories of economic migrants.⁵⁸⁴

June 15, 2010, accessed January 8, 2012

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/er/115187.pdf.

⁵⁸¹ Interview with EU Official A, March 2009, Brussels.

⁵⁸² Interview with European Parliament official A, February 2011, Brussels.

⁵⁸³ For a legal analysis of EC competence: Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law: Text and Commentary* (Leiden: Brill, 2006): 677-78.

⁵⁸⁴ European Commission, “Policy Plan on Legal Migration,” COM (2005) 669 final, December 21, 2005.

In December 2006, the European Council has put forward the concept of ‘circular migration’ in its conclusions as a policy tool to ‘strengthen and deepen international cooperation and dialogue with third countries of origin and transit, in a comprehensive and balanced manner’.⁵⁸⁵ The concept, which was developed by France and Germany, mainly refers to ‘time-lined’ temporary labour migration opportunity for partner countries in return for their cooperation primarily related to irregular migration.⁵⁸⁶ In 2007, the Commission has put forward the Mobility Partnerships proposal which has integrated the concept of temporary labour migration into the broader EU cooperation with partner countries in the area of migration management. The proposal has specified that it aims to improve ‘the management of legal movements of people between the EU and third countries ready to make significant efforts to fight illegal migration’. A pilot mobility partnership is signed between the EU member states and Moldova within this scheme.⁵⁸⁷

Circular migration is increasingly considered as a new approach to legal migration at the EU level. The discussions on the use of circular immigration as a policy tool to manage migration have been mainly initiated by international organisations such as the International Organization for Migration (IOM) and the United Nations in 2005.⁵⁸⁸ Circular migration has also been brought up by the European Commission in its publications on Migration and Development⁵⁸⁹ and further detailed concerning the

⁵⁸⁵ Council of the European Union, “Presidency Conclusions – Brussels, 14/15 December 2006,” 16879/1/06 REV1, February 12, 2007.

⁵⁸⁶ German Federal Office for Migration and Refugees (BAMF/EMN), (2011) ‘Circular and Temporary Migration Empirical Evidence, Current Policy Practice and Future Options in Germany Research Study in the Framework of the European Migration Network (EMN)’, Nurnberg.

⁵⁸⁷ Joint Declaration on a Mobility Partnership between the EU and the Republic of Moldova, 9460/08 ADD 1; The partners in the partnership are European Commission, FRONTEX, European Training Foundation and 15 EU member states: Bulgaria, Czech Republic, Cyprus, France, Germany, Greece, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and Hungary. Besides Moldova, a partnership agreement is also signed with Georgia and Cape Verde. Joint Declaration on a Mobility Partnership between the EU and Georgia 16396/09; Joint Declaration on a Mobility Partnership between the EU and the Republic of Cape Verde, 9460/08 ADD.

⁵⁸⁸ Steven Vertovec, “Circular migration: the way forward in global policy?,” *COMPAS Working Papers* 4 (2007).

⁵⁸⁹ European Commission, “Migration and development: Some concrete orientations,” Brussels: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM (2005) 390 Final, September 1, 2005.

ways in which it could be developed in the Commission's communication⁵⁹⁰ on its legal migration plan as a concept to manage migration in the EU in cooperation with the countries of origin.

In 2006, the Circular Migration initiative was supported by Germany and France ministers of interior, Wolfgang Schauble and Nicolas Sarkozy, as a framework to manage migration to the EU and cooperation with third countries.⁵⁹¹ The initiative was first proposed at the informal meeting of the ministers in the framework of the G6 attended by the interior ministers of six EU Member States.⁵⁹² Afterwards, the proposal was presented to the Finnish Presidency taking place in the second half 2006.⁵⁹³ The initiative has found support among the EU Member States. It was argued that offering circular and temporary migration to third country nationals would be an instrument to fight with irregular immigration in cooperation with third countries. In December 2006, the European Council has integrated the concept of 'circular and temporary migration' into its conclusions as a policy tool to enhance cooperation with third countries in the area of labour migration.⁵⁹⁴ In the course of the German EU Presidency in the first half of 2007, Germany has further emphasized cooperation and partnership with third countries in the framework of circular and temporary labour migration. These schemes incorporate temporary work or educational opportunities for third country nationals (with interested Member States given that it falls into their competence) in exchange for readmission of undocumented migrants or encouraging 'return migration' of third country nationals residing in the EU in partnership with the source countries.

The EU Mobility Partnerships are developed to create a cooperation platform between the interested Member States and volunteering third countries concerning different dimensions of migration based on their respective needs. The mobility partnerships are built into the EU's existing framework regarding the external dimension immigration policy (i.e. Global Approach to Migration). The EU's 'Global Approach to Migration'

⁵⁹⁰ European Commission, "Policy Plan on Legal Migration," COM (2005) 669 final, December 21, 2005.

⁵⁹¹ Interview with a National Expert, September 2009, Berlin.

⁵⁹² Interview with Member State official A, May 2009, Brussels.

⁵⁹³ Interview with a National Expert, September 2009, London.

⁵⁹⁴ Council of the European Union, "Presidency Conclusions – Brussels, 14/15 December 2006," 16879/1/06 REV1, February 12, 2007.

policy has underlined the need for a more ‘comprehensive approach’ to migration issues including legal migration. In its communication ‘Global Approach to Migration: one year on’, the European Commission emphasises the importance of responding to the needs of the labour market through allowing for the admission of specific groups of migrants such as high skilled migrations or seasonal workers to the labour market.⁵⁹⁵ The ideas regarding circular migration opportunities were already incorporated into the Commission’s review of the Global Approach to Migration. The Communication on ‘Global Approach to Migration one year on: Towards a comprehensive European migration policy’ has stated that cooperation with third countries could include legal migration opportunities (under the then called ‘Migration Packages’) given that the partner countries effectively cooperate in the area of irregular migration and readmission.

As in the case of the EU’s Global Approach to Migration, the Mobility Partnerships aim to incorporate cooperation with third countries regarding legal migration, irregular migration and to address the linkage between migration and development aspects in the source countries (such as brain drain or remittances). In view of the long-standing unwillingness of certain member states (such as Germany and France) regarding creating extensive EU level labour migration policy instruments, the Mobility Partnerships provide a flexible framework for the EU member states. One could observe the weak institutional involvement as the European Commission refrained from listing possible policy instruments in its Communication. The Communication provides a very flexible cooperation framework as interested Member States and partner countries could choose to cooperate based on their individual needs and preferences.

Given that the Mobility Partnerships aim to cover a range of policy areas, the legal basis is complicated.⁵⁹⁶ Regarding the legal migration dimension, the competences are shared between the Community and the EU member states. The Member States have the competence to determine the volume of economic migrants that could enter their labour

⁵⁹⁵ European Commission, “Communication on the global approach to migration one year on: towards a comprehensive European migration policy,” COM (2006) 735 final, November 30, 2006.

⁵⁹⁶ The Commission Communication on Mobility Partnerships does not refer to an explicit legal basis given that it is not a legislative proposal.

markets.⁵⁹⁷ Based on Article 63(3) (a) TEC, the Community has acquired competence regarding ‘conditions of entry and residence, and standards on procedures for the issue by Member States of long-term residence permits’.⁵⁹⁸ However, the European Commission has not been able to effectively exercise its competence in this area. In 2001, the Commission proposed to the Council to adopt a comprehensive Council directive in relation to the employment of third country nationals defining EU level shared rules and conditions.⁵⁹⁹ However, the member states could not reach an agreement on the proposal and it was eventually withdrawn by the European Commission.⁶⁰⁰ In view of the conclusions of the Hague Programme regarding the need for a debate on economic migration to the EU⁶⁰¹, the European Commission has drawn up a ‘legal migration policy plan’ in 2005. The policy plan focused on a number of sectors rather than adopted a general directive regarding labour migration. This approach was particularly a result of the lack of an EU level consensus among the member states. On the other hand, the policy plan did not satisfy certain member states that have a liberal approach towards labour immigration such as Sweden.⁶⁰² Moreover, the European Parliament supported a general directive rather than a sectoral one. A resolution was adopted which reflected the dissatisfaction of the EP regarding the new legal migration policy proposal.⁶⁰³

The EU Mobility Partnerships are defined as negotiations ‘with third countries that have committed themselves to cooperating actively with the EU on management of migration flows, including by fighting against irregular migration, and that are interested in

⁵⁹⁷ Council of the European Union, “The Hague Programme: Strengthening Freedom, Security and Justice in the EU 2005/C/01,” OJ C53/1, March 3, 2005. 79 (5) TFEU also explicitly stated that the volumes of economic migrants (both self employed or employed) is determined by the Member States.

⁵⁹⁸ In addition to Article 63(3) (a), Peers and Rogers (2006) argue that Article 137 TEC could also arguably provide a legal basis regarding the access of third country nationals to the EU labour market.

⁵⁹⁹ European Commission, “Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM (2001) 386, July 11, 2001.

⁶⁰⁰ European Commission, “Outcome of the screening of legislative proposals pending before the Legislator,” COM (2005) 462 final, September 27, 2005.

⁶⁰¹ Council of the European Union, “The Hague Programme: Strengthening Freedom, Security and Justice in the EU, 2005/C/01,” OJ C53/1, March 3, 2005.

⁶⁰² Interview at the Sweden Permanent Representation to the EU, February 2011, Brussels.

⁶⁰³ European Parliament LIBE Committee, “European Parliament resolution on the Policy Plan on legal migration,” A6-0322/2007 / P6-TA-PROV (2007)0414, September 26, 2007.

securing better access to EU territory for their citizens.’⁶⁰⁴ The emphasis on managing migration is quite strong in the Mobility Partnerships. From the EU side, the partnering countries are expected to cooperate with respect to the fight against irregular migration and human trafficking, border controls and document security as well as measures with respect to returns and readmissions.⁶⁰⁵ In view of the difficulty of effective migration management without strong incentives for the partner countries, the Mobility Partnerships could be seen as a package offering cooperation concerning legal and irregular migration with the aim of convincing third countries to take more responsibility in terms of irregular migration.

The objective of the Mobility Partnerships is to improve migration management as well as intensify legal migration opportunities and mobility between neighbouring countries and the EU. The partnership aims at cooperation for circular migration and returns of the migrants to tackle with the negative impacts of migration for source countries due to high skilled migration from the country of origin as well.⁶⁰⁶ The Commission's position (which was highly influenced by the German and French proposal) was objected by some member states such as Sweden. The EU level policy regarding time-lined temporary migration has clashed with Sweden's rather liberal domestic policy which offers a more flexible condition to labour migrants.

The Mobility Partnerships are also integrated into the ENP framework in line with the objective to increase cooperation between the EU and its partners. The first European Commission communication on the ENP put forward labour migration as a ‘long term objective’. In its Communication, the Commission stated that ‘The impact of ageing and demographic decline, globalisation and specialisation means the EU and its neighbours can profit from putting in place mechanisms that allow workers to move from one

⁶⁰⁴ European Commission, “On circular migration and mobility partnerships between the European Union and third countries,” COM(2007) 248 final, May 16, 2007, accessed January 2, 2012 http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2007&nu_doc=248.

⁶⁰⁵ Ibid.

⁶⁰⁶ Commission Staff Working Document, “Accompanying the Communication from the Commission to the Council and the European Parliament ‘Implementation of the European Neighbourhood Policy in 2007,” SEC(2008) 403, April 3, 2008 http://ec.europa.eu/world/enp/pdf/progress2008/sec08_403_en.pdf.

territory to another where skills are needed most.’⁶⁰⁷ However, it was underlined that ‘the free movement of people and labour remains the long-term objective’.⁶⁰⁸ Significant additional opportunities for cultural and technical interchange could be facilitated by a long-stay visa policy on the part of the EU member state’. The Migration Partnership with Moldova is a policy integrated in the framework of the ENP.

Although the Mobility Partnerships are presented as policy tools that aim to increase the channels of legal migration for the neighbouring countries, the policy development is highly conditioned by irregular migration cooperation of the partners with the EU member states. It shows that the traditional focus of the Member States on the security dimension within the external dimension of the EU migration policy is still strong. The ‘mobility partnerships’ have been negotiated with Moldova and Cape Verde as pilot programmes and followed with the partnership with Georgia. These policy instruments combine fight against irregular migration, legal migration opportunities and address the repercussions of migration regarding development in the partner countries cooperation. legal migration is one of the legs of the Mobility Partnerships, it is highlighted that the competences of the Member States concerning controlling the access of third country nationals to their labour market should be respected.⁶⁰⁹

In its resolution on the EU legal migration policy plan, the EP stated that it broadly gives its support to mobility partnership and circular migration policy instruments.⁶¹⁰ The resolution inquired about the “link between integration and ‘circularity’ and the effect that temporary migration schemes can have on legal and potentially stable labour relations”.⁶¹¹ In addition, the EP underlined the need to ‘fully respect human rights’ in relations with migrants’ countries of origin.

⁶⁰⁷ European Commission, “Wider Europe— Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours,” COM (2003) 104 final, March 11, 2003.

⁶⁰⁸ Ibid.

⁶⁰⁹ Council of the European Union, “Joint Declaration on a Mobility Partnership between the European Union and the Republic of Moldova” 9460/08 ADD 1, May 21, 2008.

⁶¹⁰ European Parliament LIBE Committee (2005) European Parliament resolution on the Policy Plan on legal migration, A6-0322/2007 / P6-TA-PROV (2007)0414, 26 September 2007.

⁶¹¹ Ibid.

6.4. Asylum Dimension: Regional Protection Programmes

Due to the legal obligations of the Member States under the Geneva Convention with respect to the protection of refugees, the ‘externalization’ of Member States’ responsibilities through the development of an external dimension has been highly contentious. The EU Member States has developed policy tools to control mounting asylum demands and some member states have pushed for ways that they could extend their responsibilities on the issue of refuge protection. The EU developed the ‘safe third country’ principle through which the Member States return asylum seekers to third countries which they pass across before reaching the EU territory.⁶¹²

The debate on the external dimension of asylum was triggered by the then British Prime Minister Tony Blair’s letter to the Presidency on ‘New International Approaches to Asylum Processing and Protection’ ahead of the Brussels European Council in March 2003.⁶¹³ The UK letter proposed two concepts: ‘regional management of migration flows’ and ‘transit processing centres’ outside of the EU to better manage the processing of asylum applications at the international level. The views of the member states differed considerably on the issue of transferring certain responsibilities to third countries concerning asylum. However, a broad agreement at the EU level has been reached regarding the establishment of Regional Protection Programmes with the aim of integrating an asylum dimension into the EU’s external relations with third countries. In 2004, the Hague Programme created a further political mandate regarding the establishment of the Regional Protection Programmes to enhance cooperation with ‘regions of origin’ regarding protection of refugees.

Following the debate on the UK letter in March 2003, the European Council asked the Commission to prepare a report on the issue in close contact with the UNHCR for the Thessaloniki European Council in June 2003. The European Commission has submitted its first proposal titled ‘Towards more accessible, equitable and managed asylum

⁶¹² Sandra Lavenex, *Safe third countries: extending the EU asylum and immigration policies to Central and Eastern Europe* (Budapest, Central European University Press, 1999): 76.

⁶¹³ British prime minister Tony Blair’s letter to Greek prime minister Costas Simitis (March 2003), available at: <http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf>.

systems' ahead of the Thessaloniki European Council. The Communication states that two measures could be supported: (i) Protected Entry Procedures in regions of origin and (ii) Resettlement Schemes. With the Protected Entry Procedure, claims for asylum are made in a host country to alleviate orderly arrival to the EU member states. The Resettlement Schemes refer to the EU's commitment to the transfer of refugees from a host country to a more developed country that offers protection guarantees. Article 63 (1) and (2) TEC justified the involvement of the Community in relation to the adoption of measures on asylum, refugees and displaced persons.

The Thessaloniki European Council asked the Commission to report on the 'orderly and managed entry in the EU of persons in need of international protection, and to examine ways and means to enhance the protection capacity of regions of origin with a view to presenting to the Council'.⁶¹⁴ Although the establishment of Protected Entry Procedures were controversial, there was an EU level consensus regarding Resettlement Schemes.⁶¹⁵

In 2004, the European Commission published a more detailed Communication on the external dimension of asylum focusing on enhancing 'protection capacities' of partner countries and EU-wide Resettlement Schemes.⁶¹⁶ In view of the lack of consensus among the Member States, the European Commission also omitted its proposal regarding setting up Protected Entry Procedures.

In its 2004 communication, the Commission introduced the 'Regional Protection Programmes' (RPPs) as a scheme to cooperate with third countries regarding asylum, legal migration opportunities, migration management and the return of irregular migrants. In its follow-up communication in 2005, the Commission proposed to develop RPPs in the WNIS region stating that there was a clear interest among the Member

⁶¹⁴ Council of the European Union, "Thessaloniki European Council 19 and 20 June 2003 Presidency Conclusions," 11638/03, October 1, 2003, accessed January 1, 2012
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf.

⁶¹⁵ Council of the European Union, "Outcome of EU Italian Presidency Seminar 'Towards more orderly and managed entry in the EU of persons in need of international protection' (Rome 13-14 October 2003)," 14987/03, November 18, 2003.

⁶¹⁶ European Commission, "Communication on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin 'Improving Access to Durable Solutions'," COM (2004) 410 final, June 4, 2004.

States regarding cooperation with the eastern neighbours regarding asylum.⁶¹⁷ As one of the main transits to the EU, it is not unexpected that the Member States prioritise cooperation with the eastern neighbours in area of migration management. The compatibility of the neighbouring states with the European standards concerning the asylum and refugee issues is highly significant for the EU side as well. The RPPs have been built on the existing cooperation in the area of migration with the region in line with the ENP Action Plans. The Progress Reports underline both the legal developments and problems in the partner countries. According to the ENP Progress Report of Ukraine published in 2010, the countries that are considered are Ukraine, Moldova and Belarus with respect to eastern neighbourhood.

The Regional Protection Programmes (RPPs) in the neighbourhood have been a very controversial issue since their introduction.⁶¹⁸ There is a strong JHA focus concerning the development of the policy tool. As the Member State that has put for the agenda, the UK has been proactive towards the development of regional protection programmes.⁶¹⁹ Germany has supported the idea that it is better for the asylum seekers to stay in the region of origin rather than being relocated to a Member State given that the international obligations regarding refugee protection are respected in the partner countries.⁶²⁰ France has been supportive of the enhancement of the refugee protection in the countries or regions concerned.

According to the conclusions of the specialized Council preparatory working group on Migration and Asylum (High Level Working Group on Migration and Asylum) meeting (2005), Austria, Czech Republic, Hungary, the Netherlands Poland, Slovakia and the UK were particularly interested in the development of a pilot Regional Protection Programme in the eastern neighbourhood.⁶²¹

⁶¹⁷ European Commission, “Communication on Regional Protection Programmes, COM (2005) 388, 1 September 1, 2005. In addition to the WNIS, a pilot programme also started in Tanzania.

⁶¹⁸ Sandra Lavenex, “Shifting Up and Out: The Foreign Policy of European Immigration Control,” *West European Politics* 29, no.2 (2006): 329-350.

⁶¹⁹ Interview with Member State official C, September 2009, London.

⁶²⁰ Interview with Member State official A, May 2009, Brussels.

⁶²¹ Council of the European Union, “High Level Working Group on Migration Meeting of 19 December 2005-Summary of Conclusions,” 5021/06, January 10, 2006.

The European Parliament adopted a resolution on the 2004 Communication of the Commission that gave support to cooperation with third countries in the area of asylum policy in the framework of the ENP and specific country Action Plans. The plan to establish EU-wide Resettlement Schemes to ensure a better managed entry to the EU is supported by the EU as well.⁶²² However, the EP resolution underlined that it refuses (LIBE committee in particular) “ ‘outsourcing’ of the application process by sending applicants for refugee status to a third country, not least because it makes it more difficult for applicants to be properly represented and removes the process from democratic oversight”.⁶²³ One could also argue that the factor that has empowered the EP is its budgetary powers in this policy area.

6.5. Chapter Conclusions

This chapter presented the EU decision-making process concerning the migration policy tools that are incorporated within the EU’s broader external relations with the Eastern neighbours focusing on irregular migration, visa cooperation, labour migration and asylum cooperation. The Chapter questioned to what extent the external dimension of immigration has been subject to institutional constraints. The analysis of the four case studies has shown that the policy outcomes in these four policy areas are subject to variable degree of institutional constraints and influence. It lends only limited supports, with respect to intergovernmental decision-making.

Building on the first part of the previous Chapter, the first level of analysis was related to the legal basis and the decision-making procedures with respect to the four case studies. As the analysis on the legal basis has shown, the EU has simultaneously acquired competence to act on these four policy areas with the ratification of the Amsterdam Treaty. The second level was about the way in which the EU Institutions have acquired institutional roles and resources that create certain dynamics over the

⁶²² European Parliament, “European Parliament resolution of 15 December 2004 on asylum procedure and protection in regions of origin on asylum procedure and protection in regions of origin (2004/2121(INI)), OJ C 226 E /226, 15 September 2005, accessed January 8, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:226E:0226:0232:EN:PDF>.

⁶²³ European Parliament, “Report of LIBE Committee on asylum procedure and protection in regions of origin (2004/2121(INI), A6-0051/2004, 29 November 29, 2004, accessed January 8, 2012 <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2004-0051&language=EN>.

years which constrain inter-state bargaining. The increasing communitarisation in the policy area after the ratification of the Amsterdam Treaty has paved the way for increased institutional roles over the years. However, the effect of the EU's institutional framework varies among different policy areas.

The policy making-process concerning the Ukrainian and the Moldavian readmission and visa liberalisation agreements has shown that the policy outcomes are subject to institutional influence. The European Commission as the negotiator on behalf of the EU in the course of these negotiations has been effective in terms of creating a package deal. Despite the emphasis of the Member States on the irregular migration dimension, the coupling of readmission and visa negotiations has created incentives for the neighbouring countries to cooperate with the EU on the issue of the return of irregular migrants.

The EU has a relatively long history of integration with respect to irregular migration and short-stay visas. The qualified majority voting in the Council has highly constrained the Member States' actions particularly in relation to the negative and positive lists to cross the Schengen border. Despite the salience of the policy area, the negotiations regarding short-stay visas have shown that the Member States' actions are highly restricted on the issues where QMV is in place. On the other hand, consensus-building has been highly important despite the decision-making rules. As mentioned above, in the course of the negotiations concerning the visa liberalisation Action Plans for Ukraine and Moldova, the Member States did not calculate the votes. The decision was taken following the negotiations in the Council.

However, the EP had limited competences during the negotiations on the Ukrainian and Moldavian agreements due to the consultation procedure regarding the ratification of the agreements based on the pre-Lisbon set-up. Since the ratification of the Lisbon Treaty and its entry into force in December 2009, the EP competences have increased as it has to ratify readmission and visa facilitation agreements.

The issue of competences regarding the labour immigration dimension is relatively more salient compared to other policy areas. Although the EU has acquired

competences to act in the domain of legal migration, the unanimity requirement has restricted policy development and the Commission's involvement. The Member States have been reluctant in terms of discussing the issues related to labour migration at the EU level. In line with this, the external dimension of the EU's immigration policy does not have a substantial labour migration component. Rather than adopting an ambitious agenda, the European Commission has been cautious regarding the labour immigration policy tools that are incorporated into the broader EU cooperation with third countries in the area of migration. The Mobility Partnerships have been developed as flexible schemes that incorporate a number of dimensions including labour migration. In addition, the scope of the labour migration dimension of Mobility Partnerships is limited. The policy tools are mainly built on the 'circular and return migration' concept developed by the European Commission building on a proposal which had come from Germany and France. The Lisbon Treaty also further clarified the competences of the Member States regarding the admission volumes of economic immigrants.

Regarding the external dimension of EU's asylum policy, the debate regarding cooperation with the regions of origin has started at the intergovernmental level within the European Council framework. However, the role of the European Commission has been important to reach a consensus in view of the Member States' varied views on the issue. The European Commission proposals on the issue in 2003 and 2004 have diverged from the initial UK proposal and brought about a consensus among the member states and the European Parliament.

CHAPTER 7: Reflections on the Theoretical Framework, Analysis of the Case Studies and Conclusions

In focusing on the eastern neighbourhood, the thesis has provided an analysis of the decision-making process in the EU with respect to the external dimension of migration. The research assessed the explanatory power of two different sets of theories: *intergovernmentalist/state-centric* and *non state-centric/institutionalist* approaches to EU decision-making so as to analyse the ways in which the EU institutions influence or constrain the Member States in the four specific policy areas. Although the external dimension of migration has traditionally been subject to strong intergovernmental influence, the thesis examined the influence of the EU's institutional framework on the decision-making process.

7.1. Reflection on the Analytical Framework

Based on the intergovernmental and the institutionalist approaches, the thesis identified two main hypotheses regarding EU decision-making:

H1 The EU decision-making process in the area of external dimension of immigration is a result of inter-state bargaining among the Member States with aggregated exogenous policy preferences.

H2 The EU's institutional framework acts as an intervening factor with respect to EU decision-making process in the area of external dimension of immigration by constraining certain actions at the EU level.

To put these hypotheses to an empirical test, the research conducted a comparative analysis of four policy areas within the area of external dimension of migration: (i) irregular migration; (ii) visas; (iii) labour migration; (iv) asylum. The empirical analysis of the case studies displayed that the intergovernmentalist theoretical explanations that solely take into account the official EU level policy positions of the Member States failed to provide a full picture of the decision-making process. The analysis showed that

the EU's institutional structure feeds into the decision-making process. The comparative analysis of the four sub-policy areas that have different legal basis and decision-making procedures enabled the testing of the two hypotheses presented above based on different levels of constitutional development. As presented in Chapters 5 and 6, the legal framework as well as the influence of the EU Institutions are highly different for each case study. The following section addresses the main research question reflecting on the two hypotheses based on the four case studies of the thesis.

7.2. Divergence among the Case Studies

This section evaluates the impact of the EU's institutional framework on the decision-making process reflecting on (H1) the dominance of the inter-state negotiations and (H2) the impact of the EU's institutional framework. On the basis of the systematic application of process tracing method, the research concluded that a pure inter-state bargaining viewpoint fails to fully explain the EU decision-making process with respect to the external dimension of migration. As opposed to the H1, the H2 indicated a relation between the institutional framework and how policies were agreed at the EU level. Although the degree to which the case studies supported H2 differ, it was shown that the EU's institutional framework has an impact. The relationship was evaluated based on the four policy areas that were identified.

Policy areas	Policy Instruments	Member State' Policy Positions	EU level Decision-Making Process	Overall Institutional Influence assessment
Irregular Migration	Readmission Agreements with UA & ML	<p>-<i>High Consensus</i> to sign readmission agreements with UA & ML.</p> <p>-All five MS consider irregular migration cooperation with UA & ML to be essential.</p> <p>-DE, FR & UK put higher priority on irregular migration cooperation in comparison to PL & SE.</p> <p>-All five MS supported the use of readmission agreements to fight against irregular migration.</p>	<p>-QMV procedure in the Council</p> <p>-Policy positions of the MS in the Council converged. Limited policy flexibility due to strong intergovernmental pressure in the area of irregular migration.</p> <p>-Commission managed to convince the Council to combine readmission and visa facilitations for UA & ML to speed up the readmission agreement negotiations</p> <p>-EP exercised limited influence due to the consultation procedure. (a)</p>	Moderate
Visa	<p>Conditions for short-term travel to Schengen countries for the citizens of UA & ML</p> <p>i) Visa facilitation</p> <p>ii) Visa liberalisation (b)</p>	<p>-<i>Low Consensus</i> among the MS regarding the liberalisation of visa regime for UA & ML</p> <p>-Broad consensus on the visa facilitation agreements among the five MS</p> <p>-Divergences regarding visa liberalisation:</p> <p>.DE, FR & UK were lukewarm towards the abolition of visa requirement for UA & ML. Their concerns were shared by other old MS.</p> <p>.PL & SE were pro-visa liberalisation.</p> <p>Other new MS supported visa liberalisations.</p>	<p><u>i) Visa Facilitation Agreements:</u></p> <p>-QMV in the Council</p> <p>-MS positions in the Council converged.</p> <p>-Limited EP influence due to the consultation procedure. (c)</p> <p><u>ii) Visa Liberalisation Process:</u></p> <p>-QMV paved the way for compromise despite the divergent policy positions. Coalitions polarised between actors who were in favour of visa liberalisation for UA, ML & RU and those against.</p> <p>-Commission was pro-liberalisation. The agreement on the visa liberalisation action plans was reached following various Commission proposal drafts.</p> <p>-EP's standpoint was considerably influential due to its increased competences after the Lisbon Treaty. (d)</p>	High

Policy Areas	Policy Instruments	Member States' Policy Positions	EU Level Decision-Making Process	Overall Institutional Influence assessment
Labour Migration	Mobility Partnerships with ML	<p><i>-Low Consensus</i> among the MS regarding adopting EU level labour migration instruments for the eastern neighbours</p> <p>-DE, FR & UK were against an active EU labour migration policy.</p> <p>-SE and PL were in favour of flexible labour migration policies.</p> <p>-Commission Proposal grew out of bilateral DE & FR initiative</p>	<p>-Unanimity required in the Council (e)</p> <p>-Limited Commission policy entrepreneurship due to the salience of the policy area and the unanimity requirement.</p> <p>-Agreement was only achieved on a flexible and voluntary labour migration scheme under the Mobility Partnerships</p> <p>-EP exercised limited influence due to the consultation procedure. (f)</p>	Low
Asylum	Regional Protection Programmes in UA, ML & BY	<p><i>-Moderate Consensus</i> among the MS regarding integrating an external dimension to their asylum policies and cooperation with the eastern neighbours.</p> <p>-Commission proposal triggered by UK initiative on the international dimension of asylum</p> <p>-MS took polarised positions due to the sensitivity of the issue</p>	<p>-QMV in the Council</p> <p>-Commission eventually formulated a proposal supported by the Council.</p> <p>-During the negotiation process, the EP enhanced its position due to its budgetary competences</p>	Moderate

Table 4: Divergences among the Case Studies

- Given that the readmission agreements with Ukraine and Moldova were concluded under the Amsterdam Treaty procedures, the EP's opinion was not binding. The consent of the EP has become required for the conclusion of readmission agreements with third countries after the ratification of the Lisbon Treaty.
- The definitions of these two policy instruments are provided on page 10.
- Similar to the readmission agreements, the position of the EP was not binding until the ratification of the Lisbon Treaty in December 2009.
- The EP gained co-decision powers in the area of short-term visas after Lisbon.
- The unanimity requirement in relation to labour migration policy area has been abolished after Lisbon. However, the Member States determines the volumes of admissions to their territory.
- The EP has become co-legislator in this area along with the Council after the ratification of the Lisbon Treaty.

Table 4 above summarises the qualitative analysis of the main findings of the thesis based on the four sub-fields of the external dimension of migration. It combines two analyses (1) the analysis presented in Chapter 4 in relation to the policy positions of the Member States and (2) the final outcome of the thesis.

Chapter 4 identified a high level of consensus among the Member States with respect to irregular migration cooperation. High consensus among the Member States' policy preferences is considered a factor that limits the impact of the EU's institutional framework. On the other hand, in the area of visa policy, there was a lack of consensus due to the disagreements with respect to the liberalisation of mobility regime (both for short-term visas and labour migration) for the citizens of the eastern neighbours. As shown in Chapter 6 on the negotiations at the EU level, the lack of consensus increased the impact of the institutional constraints such as the QMV particularly in the case of visas. Lastly, in the area of asylum, Chapter 4 found moderate convergence among the policy positions of the Member States.

Reflecting upon the Member States' policy preferences (Chapter 4) and the EU level negotiations (Chapter 5 and 6) with respect to each case study, the thesis presents an analysis on the decision-making in the area of external dimension of migration in Table 1. In Table 4, *Low* influence indicates that institutional constraints are limited to procedural roles in the course of negotiations without tangible policy influence. This is mainly relevant for the cases that unanimous decision-making is applied. *Moderate* influence refers to some influence which changes policy negotiations without leading to strong concessions. This is particularly relevant for the policy areas in which, despite communitarisation, intergovernmental pressure is strong. *High* influence refers to the cases that institutional constraints on Member States are diagnosable and policy negotiations are observably influenced by the institutional framework.

As shown in Table 4, the case study that strongly supported hypothesis 2 is the decision-making process with respect to the short-term visa policy of the EU. On the other hand, labour migration was the least supportive case study with respect to the second hypothesis. Below, a detailed examination with respect to each case study is presented.

Irregular Migration

Despite strong intergovernmental pressures in the area of irregular migration, the empirical analysis of the case study on irregular migration, which focused on the readmission agreement negotiations, showed that a strict intergovernmental analysis fails to explain the decision-making process. The irregular migration case study *moderately* supported the second hypothesis. The Member States have traditionally put an emphasis on cooperation concerning irregular migration in their relations with the eastern neighbourhood. In the initial documents concerning the ENP, the security risks emanating from the region including irregular migration were particularly underlined with the eastward shift of the Schengen borders. The European Commission has strongly reflected the concerns of the Member States regarding irregular migration and put readmission agreements as a high priority in its communications and proposals on the ENP since the beginning. The ENP documents (i.e. Country Reports, Action Plans for the eastern neighbours that were released at the beginning and the annual reports on the progress of the partner countries) systematically evaluated the problems concerning border management and irregular migration problems experienced in the neighbouring countries underlining the need for further cooperation. Despite strong intergovernmental pressures in the policy area, the empirical analysis of the readmission agreement negotiations with Ukraine and Moldova shows that a strict intergovernmental analysis fails to explain the decision-making process. The strong involvement of the European Commission, in particular in the course of EU level readmission agreement negotiations, should be taken into account.

In the JHA Council and the European Council, there was a consensus with respect to the need to cooperate with the eastern neighbours concerning returning undocumented migrants. This could be seen as the continuation of EU's externalisation process of migration management since the end of the Cold War. The new eastern Member States were faced with similar demands regarding irregular migration cooperation ahead of their accession to the EU.⁶²⁴ As stated in the conclusions of Chapter 4, the official policy positions of the Member States regarding the fight against irregular migration considerably converge. All the five Member States that the study focused on (France,

⁶²⁴ The externalisation literature draws attention to the EU's transfer of its responsibilities outside in relation to migration management.

Germany, Poland, Sweden, the UK) agree on the fact that irregular immigration is an important part of EU cooperation with third countries and they strongly supported the negotiations with the partner countries. This has made it harder to judge the impact of the qualified majority voting in the Council as an institutional constraint on the decision-making process. Considering high levels of irregular migration from the eastern neighbours to the EU due to the long land border and its unfavourable economic or security related repercussions, the Member States highly supported the readmission agreements. The Member States that were faced with a greater threat of irregular migration (such as Germany or the UK) from the region clearly have a stronger voice regarding the purported security risks and conjoined economic and political instability associated with the eastern neighbourhood. Even the Member States that are in favour of a balance between security oriented and mobility oriented migration management approach towards the eastern neighbours (such as Poland and Sweden) favour the conclusion of the readmission agreements. These agreements are by and large considered as practical and they facilitate the process of returning irregular migrants to the countries of origin or transit.

The external dimension of immigration policy has been systematically discussed at the European Council meetings due to its salience for the Member States. The agenda of the JHA Council and its preparatory working groups and the DG Home Affairs in the Commission have been subject to strong political pressure by the heads of states and governments in the area of irregular migration cooperation with third countries. Since the Feira European Council in 2000, the heads of states and governments have put high emphasis on the conclusion of readmission agreements. At the Seville European Council in 2002, the heads of states agreed that cooperation in the area of irregular migration should be a precondition for closer cooperation with the EU.

The Member States also put pressure on the EU decision-making process through intergovernmental/transgovernmental networks outside of the EU framework. As shown in Chapter 6, the informal G6 meetings that take place outside of the EU framework formed of interior ministers of France, Germany, Italy, Poland, Spain and the UK has

put strong pressure on the formal decision-making process. Since its first meeting in 2003 in Spain, irregular migration has been an important item on the agenda of the interior ministers. The biannual meetings of the largest six Member States of the EU have been criticized due to the fact that they have systematically allowed the largest members of the EU to privately discuss their positions prior to the EU level meetings and possibly impose their own policy preferences on the rest of the Member States and the EU Institutions. In addition to informal meetings, the Member States also cooperate in transgovernmental networks such as the General Directors of Immigration Services (GDISC) and Soderkoping Process to discuss the EU policy towards the region.

However, an inter-state bargaining process fails to explain the role of the European institutions, particularly the European Commission in relation to the readmission agreements that were concluded with Ukraine and Moldova. The mandates to negotiate readmission agreements with the eastern neighbours that were given to the European Commission to negotiate EU level readmission agreements aimed at further fostering the Member States' interests in this area in addition to their national bilateral agreements with the neighbours. Although the European Commission was given the negotiation mandate for the readmission agreement between the EU and Ukraine in 2002, the Commission failed to conclude a prompt agreement. This is particularly related to the fact that readmission agreements mainly serve the interests of the EU rather than the partner countries. Although the EU was able to conclude such agreements with accession countries, the negotiations were difficult with the neighbours.

The lengthy readmission agreement negotiations were discouraging for the Member States to pursue Community level measures in the area of readmissions. On the other hand, the European Commission has been trying to encourage the Member States to cooperate within the treaty framework since the ratification of the Amsterdam Treaty. It was important for the European Commission to successfully complete the negotiations to promote EU level readmission negotiations. As such, the Commission managed to negotiate with the Council a compromise. With the aim of creating incentives for the partner countries, the European Commission pushed for a package deal that combined readmission and visa facilitation agreements for the eastern neighbours. The Member

States modified the negotiation mandate which was given to the European Commission and added a mandate in relation to visa facilitation to be negotiated with Ukraine. These package deals were for the first time negotiated with Russia and Ukraine and later followed by Moldova. This was particularly important for the European Commission given that the successful conclusion of the negotiations increased the confidence of the Member States in relation to EU level readmission agreements negotiated by the European Commission on behalf of the EU. The coupling of readmission and visa facilitation has become a regular policy tool of the external dimension of migration cooperation with the ENP partner countries in the east.

Visa Cooperation

The case study on EU visa policy towards Ukraine and Moldova highly supports the second hypothesis. In line with the ENP goals in relation to mobility, the cooperation in the area of short-stay visas has been an issue of high importance to facilitate the mobility between the EU and partner countries. However, the policy preferences of the Member States strongly differed with respect to the facilitation of mobility for the nationals of partner countries. The empirical analysis focused on the visa facilitation negotiations and the adoption of the Action Plans for the visa liberalisation for Ukraine and Moldova. The analysis shows that the EU's institutional framework had a strong influence on the policy-making process. Firstly, the QMV in the Council forced the Member States to agree on a common position despite their diverging official policy positions on the issue. Secondly, the Commission was very active in the negotiation process and maintained its policy position. Rather than an inter-state bargaining among the capitals, the EU's institutional framework has shaped and enforced certain policy outcomes during the negotiations with respect to the EU visa policy towards the eastern neighbours.

Due to their limited scope, the EU level agreement on offering visa facilitation to the eastern neighbours was reached without difficult debates in the EU. The concept of visa facilitation was mainly pushed by the European Commission as a 'compensatory measure' to be offered to the partner third countries to make them agree to readmission agreements. The European Commission managed to convince the Member States to

offer visa facilitation agreements to the neighbours to encourage them to sign readmission agreements. Visa facilitations were seen as rewards for signing readmission agreements and they did not severely change the visa requirement for the neighbours. However, the negotiations concerning the visa liberalisation towards the eastern neighbours have been highly difficult due to the diverging preferences of the Member States.

As shown in Chapter 4 on Member States' policy positions, the preferences of the Member States strongly differed on the issue. Among the countries that the thesis focuses, France and Germany were reluctant with respect to offering visa liberalisation to Ukraine and Moldova due to the risk of migratory pressures from the region. Germany in particular supported a very restrictive language regarding the visa dimension in the course of the Eastern Partnership negotiations. Although the agreement regarding starting a dialogue on visa cooperation with Ukraine was agreed during the French Presidency, France was reluctant to support the prompt liberalisation of the EU's visa regime towards the eastern neighbours. On the other hand, Poland actively advocated further liberalisation of movement for the nationals of the eastern neighbours. The views of Poland were also shared among the new Member States that entered the EU in 2004 and 2007. These Member States have historically been either source or transit countries of immigration rather than destination. They did not share the concerns of the old Member States that have been subject to high levels of migration. Similar to the new Member States from the east, Sweden was in favour of further liberalising mobility for the citizens of eastern neighbours parallel to its long-standing liberal approach with respect to migration.

As shown in Chapter 6 on the negotiations regarding visa liberalisation in the Council, the QMV forced the Member States to agree on a common position regarding visas. During the Council negotiations in the first half of 2010, certain Member States (including France) were interested in starting the visa liberation negotiations with Russia as opposed to the new Member States that traditionally prioritise relations with Ukraine and Moldova. The negotiations among the EU Member States with respect to visa liberalisations further demonstrated that diverging foreign policy priorities of the

Member States should be balanced with respect to EU policy towards third countries. Rather than an outcome of the lowest common denominator, the consensus in the Council on starting ‘the operational phase’ of the visa liberalisation negotiations with the eastern neighbours has paved the way for a political agreement. This has been an example of compromised decision-making among different actors in the EU.

Although the intergovernmentalist approach to EU decision-making argues that different preferences are aggregated at the national level and the Member States defend one official policy position at the EU level, the policy preferences of the Foreign Affairs Council and the Justice and Home Affairs Council differed.

The state-centric approaches disregard the impact of the EU institutions concerning decision-making process and rather focus on intergovernmental bargaining. However, the empirical findings of this thesis challenged this argument. The interviews with the officials who took part in the negotiations showed that the role of the European Commission was very significant during the EU level visa policy negotiations towards Ukraine and Moldova. It was clear that the European Commission wanted to reach an agreement regarding the visa liberalisations towards eastern neighbours as the main negotiator with the partner countries. Due to the reluctance of some Member States (such as Austria, Germany, France and the Netherlands), the negotiations could not be transferred to an operational stage despite the dialogue. The Commission acted as a facilitator between the Member States in respect to adopting ‘the Action Plans’ for visa liberalisation negotiations. This prompted the Member States to reach a consensus in the Council. Additionally, it is also suspected that the European Parliament will be an important actor once the operational stage is concluded bearing in mind that it has gained co-decision competences regarding determination of the EU's common visa list with the Lisbon Treaty since December 2009.

Labour Migration

Among the four case studies, the case study on labour migration which focuses on the EU decision-making with respect to the Mobility Partnership with Moldova supports hypothesis 1 rather than hypothesis 2. The emphasis on intergovernmental cooperation

concerning labour migration was stronger compared to the other areas of cooperation before the ratification of the Lisbon Treaty in December 2009. With respect to the development of a labour migration towards the eastern neighbours, the decision-making process was subject to strong intergovernmental influence. Due to unanimity requirement in the Council concerning the measures on legal migration, the European Commission proposal gave the Member States high flexibility with respect to labour dimension of cooperation with the neighbours.

Before the ratification of the Lisbon Treaty (which has introduced QMV in the Council and co-decision), the unanimous decision-making requirement in the Council paved the way for limited legislative development in the area of labour migration as shown in Chapter 5. Due to the unanimity requirement, the Member States did not need to make any concessions if a policy proposal was not in line with their policy preferences. The policy-outcome tended to be the lowest common denominator. The unanimity requirement in the Council also discouraged the European Commission to be pro-active in the sense that it would not make a proposal that was not supported by all Member States. Although the European Commission was the sole initiator, it was not able to fully exercise its competences and push for its policy preferences. As a result, the legislative developments at the EU level regarding labour migration field have been limited given that the focus of immigration cooperation has been centred on managing migration flows to the EU. The initiatives concerning labour migration within the external relations of immigration have been limited as well.

As shown in Chapter 6, the Mobility Partnerships were initially debated within the G6 framework as a proposal developed by France and Germany in Paris and Berlin as a framework to manage migratory pressures. The German and French interior ministers managed to advance their policy preferences regarding the circular migration concept as a model that integrates different dimensions of immigration such as temporary migration and the fight against irregular migration. This initiative was first presented to the European Council in December 2006. The European Commission's follow-up proposal introduced a concept called 'Mobility Partnerships' to be negotiated with neighbouring countries which was in line with the French-German initiative on circular

migration. Moreover, the Mobility Partnership concept was formulated as a highly flexible framework. Participation of the Member States to the Mobility Partnerships was voluntary. Although certain Member States were not content with the scope of the initiative (such as Sweden), Germany and France managed to push for their policy at the EU level.

There is a relatively stronger intergovernmental focus concerning the legal migration dimension as the impact of the institutions are limited with respect to shaping the policy outcomes. The main factor that limited institutional constraints was the unanimity requirement in the Council regarding legal migration. The European Commission was not able to push for an ambitious policy proposal as it was certain that the proposal could easily be vetoed. However, it should be noted that the Lisbon Treaty has introduced the QMV in the Council regarding EU measures in the area of labour migration as stated in Chapter 5. Although the competence of the Member States regarding the volume of labour migrants is protected under the Lisbon Treaty, post-Lisbon decisions regarding labour migration measures are adopted based on the QMV in the Council. Moreover, the influence of the European Parliament is increased under the co-decision procedures.

Asylum Cooperation

The case study regarding asylum cooperation which focuses on the negotiations regarding the Regional Protection Programmes (RPPs) moderately supports the second hypothesis. The negotiations in the EU concerning the development of an external dimension of asylum were highly controversial. The initiative was put forward by the UK regarding processing asylum applications outside of the EU territory at the European Council in March 2003. As detailed in Chapter 5, an agreement was reached within the EU regarding the establishment of pilot 'Regional Protection Programmes' in the EU's eastern dimension (Ukraine) and one in the Southern neighbours (Tanzania) in line with emphasis put on the issue by certain Member States. The aim of the RPPs was to support the development of legal and institutional infrastructure of the partner countries. In line with the first hypothesis, the intergovernmental pressure was strong on the EU decision-making process. However, the European Commission and the

European Parliament were very influential in the course of the negotiations.

As the management of asylum applications is very significant for the EU Member States that have been faced with high levels of asylum applications, the intergovernmental pressure on the EU decision-making was high. As shown in Chapter 4, the views of the countries that the thesis focused on diverged. The UK was the main Member State that pushed for an EU level agreement. However, France, Germany, Poland and Sweden were not very supportive of the UK proposal. Following the European Council in March 2003, the European Commission was asked to prepare a proposal regarding the international dimension of asylum. The Commission proposal regarding 'Protected Entry Programmes' and 'Resettlement Schemes' were in line with the UK initiative and the European Council conclusions. However, the negotiations were difficult at the EU level primarily due to disagreements among the Member States on the transfer of competences to third countries.

Despite strong intergovernmental pressure, certain levels of institutional constraints were observed. Among the measures that the Commission proposal contained, the main controversy was regarding the 'Protected Entry Programmes' due to the strong focus on transferring responsibility to third countries. The European Commission had a considerable role with respect to building a consensus on cooperating with third countries in the area of asylum in view of the diverging policy positions of the Member States.

On the other hand, as shown in Chapter 6, the European Parliament was able to reflect its concerns in relation to the external dimension of asylum. The constitutional and budgetary powers of the European Parliament were highly influential in the course of the negotiations. Due to pressures, the European Commission did not continue with the proposal on 'Protected Entry Programmes' due to the lack of an EU level agreement. The development of the RRP in the eastern and southern neighbourhood was rather a compromise both within the Council and between Council and the European Parliament.

7.3. Concluding Remarks

The analysis of the case studies above mainly addresses two key hypotheses. The first hypothesis projects that EU decision-making is a result of inter-state bargaining among the Member States. In line with H1, the EU institutions have a minimal role and they cannot reflect their preferences on policy outcomes. However, the second hypothesis takes into account the impact of the decision-making procedures that restrict the impact of the Member States and also provide room for institutional influence. The evolution of EU policy concerning the Eastern neighbours with respect to external dimension of immigration has shown that the decision-making process does not only involve an inter-state bargaining process. Indeed, the institutional structure of the EU imposes considerable constraints.

The level of constraints could be explained by both (i) the legal basis and the decision-making procedures and (ii) the role and influence of the EU institutions in the course of the negotiations due to expertise and resources. Regarding the legal framework, the institutional constraints are higher in some case studies in comparison to the others. These variations are in concern to where the Member States have to decide based on QMV in the Council and the areas that the European Parliament has co-decision competences. Besides the legal basis, consensus-building has become an important dimension of practice in the Council in the area of external dimension of migration in the EU. This has also increased the role of the Commission as a facilitator with respect to policy debates to prompt the Member States during the Council negotiations. On the other hand, EU decision-making in the area of migration is a dynamic process. Ratified in December 2009, the Lisbon Treaty has further extended the use of qualified majority and co-decision concerning the migration policy area. This demonstrates that the Member States are willing to abolish their veto powers with respect to the measures in relation to migration.⁶²⁵

The thesis chose four case studies from the migration policy area which has enabled a detailed comparative analysis in relation to the specific causal mechanisms within this

⁶²⁵ For a detailed analysis of the impact of the Lisbon Treaty regarding EU decision making procedures in the area of migration: Steve Peers, "Legislative Update: EU Immigration and Asylum Competence and Decision-Making in the Treaty of Lisbon," *European Journal of Migration Law* 10 (2008): 219-47.

policy area. Based on the findings drawn from the four case studies, the research did not aim to draw general conclusions that could be horizontally relevant for EU decision-making processes in different policy areas. Nevertheless, certain relations and dynamics that have been identified in the findings are subject to ‘context’ factors that are relevant for migration cooperation with third countries. Moreover, a number of findings could be relevant for broader cooperation between the EU and its partner countries. In the area of cooperation with the neighbours, the research pointed at the growing importance of external relations actors. This is particularly linked to the ENP and the Eastern Partnership which have empowered the external relations officers. Even in the area of migration - a field that has conventionally been considered as ‘high politics’- one could observe the increasing importance of the policy actors who are outside of home affairs field. This is not only relevant for the European institutions, but also national actors. Although the thesis did not attempt to conduct a national level analysis, it was clear that the officers who work at the ministries of migration and foreign affairs have different preferences over these issues. As opposed to intergovernmentalist approach, the preferences of the Member States are not always aggregated at the national level. Although at domestic level interior ministries traditionally exert authority in the field of migration (more in some countries than others such as Germany and the UK), foreign ministry officers could also wield influence through the increased mandate bestowed to the Foreign Affairs Council at the EU level.

This outcome points at the importance of intra-institutional decision-making both at the EU and national level. Although the main focus of the research was on the broader influence of the Member States and the EU’s institutional framework, it can be concluded that further research on administrative/bureaucratic dimensions of decision-making is likely to provide important insights into the study of EU decision-making dynamics.

Bibliography

“A chilly season for Ukrainians in Germany,” Deutsche Welle, March 16, 2005, accessed January 7, 2012 <http://www.dw-world.de/dw/article/0,,1519617,00.html>.

Abiri, Elisabeth. “The Changing Praxis of ‘Generosity’: Swedish Refugee Policy during the 1990s,” *Journal of Refugee Studies* 13, no.1 (2000): 11-28.

Address delivered by Günter Gloser, Minister of State for Europe, at the ENP conference in Brussels entitled "Working together – strengthening the European Neighbourhood Policy" available at <http://www.deutsche-aussenpolitik.de/daparchive/anzeige.php?zaehler=9600>.

Albertinelli, Anthony. Asylum applicants and first instance decisions on asylum applications in 2010, Eurostat Data in focus 5 (2011)
<http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>

Albertinelli, Anthony. Asylum applicants and first instance decisions on asylum applications in 2010, Eurostat Data in focus 18 (2010)
<http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>.

Albertinelli, Anthony and Juchno, Piotr. Asylum applicants and decisions on asylum applications in Q4 2008, Eurostat Data in focus 9(2008)
<http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>.

Annual Report on Asylum and Migration statistics 2004 and 2005: Synthesis Report, European Migration Network, September 2008.

Armstrong, Kenneth A. and Bulmer, Simon J. *The Governance of the Single European Market*. Oxford: Manchester University Press, 1998.

Aspinwall, Mark D. and Schneider, Gerald. “Same menu, separate tables: The institutionalist turn in political science and the study of European integration,” *European Journal of Political Research* 38, no.1 (2000): 1-36.

Balzacq, Thierry and Carrera, Sergio, “The Hague Programme: The Long Road to Freedom, Security and Justice,” in *Security vs Freedom*, eds. Thierry Balzacq and Sergio Carrera. Aldershot: Ashgate, 2006.

Barbé, Esther, Costa, Oriol, Herranz, Anna and Notorski, Michal. “Drawing the Neighbours Closer ... to What? Explaining Emerging Patterns of Policy Convergence between the EU and its Neighbours,” *Cooperation and Conflict* 44, no.4 (2009): 378-399.

Barcelona Declaration and the Euro-Mediterranean Partnership
http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/r15001_en.htm.

Betts, Alexander. "The International Relations of the 'New' Extraterritorial Approaches to Refugee Protection: Explaining the Policy Initiatives of the UK Government and UNHCR," *Refuge: Canada's Periodical on Refugees* 22, no (1) (2004).

Boccardi, Ingrid. *Europe and refugees: towards an EU asylum policy*. The Hague: Kluwer Law International, 2002.

Bosche, Monika. "Trapped inside the European Fortress? Germany and European Union Asylum and Refugee Policy" in *Germany's EU policy on asylum and defence* ed. Gunther Hellman. Hampshire: Palgrave Macmillan, 2006.

Bosse, Giselle. "Challenges for EU governance through Neighbourhood Policy and Eastern Partnership: the values/security nexus in EU–Belarus relations," *Contemporary Politics* 15, no.2, (2009): 215-227.

Boswell, Christina. "Evasion, Reinterpretation and Decoupling: European Commission Responses to the 'External Dimension' of Immigration and Asylum," *West European Politics* 31, no.3 (2008): 491-512.

Boswell, Christina "The External Dimension of EU immigration and asylum' policy," *International Affairs* 79, no.3 (2003): 619-38.

Boswell, Christina. *The Political Uses of Expert Knowledge: Immigration Policy and Social Research*. Cambridge: Cambridge University Press, 2009.

Boswell, Christina and Hough, Dan. "Politicizing migration: opportunity or liability for the centre-right in Germany," in *Immigration and Integration Policy in Europe: Why Politics – and the Centre-Right Matter* ed. Tim Bale. Oxon: Routledge, 2009.

British Home Office. Controlling our borders: making migration work for Britain. Five-year strategy for asylum and immigration, Cm. 6472. London: HMSO, 2005.

British prime minister Tony Blair's letter to Greek prime minister Costas Simitis (March 2003). Available at: <http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf>.

Bulmer, Simon J. "New Institutionalism, The Single Market and EU Governance," ARENA Working Papers WP 97/25, (1997). Accessed January 2, 2012 http://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers1997/wp97_25.htm

Bulmer, Simon J. "The Governance of the European Union: A New Institutional Approach." *Journal of Public Policy* 13, no. 4 (1994): 351-80.

Buras, Piotr and Pomorska, Karolina. "Poland and the European Neighbourhood Policy." *Foreign Policy in Dialogue* 6, no.19 (2006): 34-43. Accessed January 7, 2012 www.deutsche-aussenpolitik.de/newsletter/issue19.pdf.

Carbone, Maurizio. "Between ambition and ambivalence: Italy and the European Union's Mediterranean policy." *Modern Italy* 13, no.2 (2008): 155-168.

Cassarino, Jean-Pierre. "Informalising Readmission Agreements in the EU Neighbourhood." *The International Spectator* 42, no.2 (2007): 179-196.

Cassarino, Jean-Pierre. "Beyond Asymmetries: Cooperation on Readmission in the EU neighbourhood." Paper presented at the EUSA Twelfth Biennial International Conference, Boston, Massachusetts, March 3-5, 2011. Accessed January 1, 2012 http://euce.org/eusa/2011/papers/3b_cassarino.pdf.

"Chancellor Possibly Knew About Visa Row," March 24, 2005. Accessed January 7, 2012 <http://www.dw-world.de/dw/article/0,,1528946,00.html>.

Christiansen, Thomas, Tonra, Ben Tonra and Petito, Fabio. "Fuzzy Politics Around Fuzzy Borders: The European Union's 'Near Abroad'," *Cooperation and Conflict* 35, no.4 (2000): 389-416.

Cini, Michelle. "Administrative Culture in the European Commission: the case of competition and environment," (paper presented at the fourth biennial International Conference of the European Community Studies Association (ECSA), Charleston, South Carolina, USA. May 11-14, 1995)

Collinson, Sarah. "Visa Requirements, Carrier Sanctions, 'Safe Third Countries' and 'Readmission': The Development of an Asylum 'Buffer Zone' in Europe, *Transactions of the Institute of British Geographers*, New Series 21, no. 1 (1996): 76-90

Comelli, Michelle. "The challenges of the European Neighbourhood Policy," *The International Spectator* 39, no.3 (2004): 97-110.

Conclusions on the visit of the EU migration mission of 22 September 2010 (29/09/2010) http://eeas.europa.eu/delegations/ukraine/press_corner/all_news/news/2010/2010_09_29_1_en.htm

Cooperation with third countries on migration http://ec.europa.eu/home-affairs/policies/immigration/immigration_intro_en.htm

Copsey, Nathaniel. "The Member States and the European Neighbourhood Policy," *European Research Working Papers* 20. Birmingham: European Research Institute, 2007.

Copsey, Nathaniel and Mayhew, Alan. eds. *European Neighbourhood Policy and Ukraine*. Brighton: Sussex European Institute, 2005.

Council of the European Union. "Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, Official Journal of

the European Union. Accessed January 17, 2012
http://ec.europa.eu/world/enp/pdf/oj_l310_en.pdf.

Council of the European Union. “Press Release 2808th General Affairs Council Meeting Council Conclusions on extending and enhancing the Global Approach to Migration,” Luxembourg, 10654/07, 17-18 June 2007. Accessed January 1, 2012
<http://www.consilium.europa.eu/press/press-releases/search?command=d&id=&lang=en&doclang=EN&dockey=94803>

Council of the European Union. “Presidency Conclusions . Seville, 21 and 22 June 2002,” 13463/02, 2002. Accessed January 1, 2012
<http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002&bid=76&lang=en&id=>.

Council of the European Union. “2421st Council meeting – General Affairs - Luxembourg, 15 April 2002,” 7705/02 (Presse 91) (2002).

Council of the European Union. “Edinburgh European Council 11-12 December Presidency Conclusions- Annex 5: Declaration on Principles of Governing External Aspects of Migration Policy,” SN 456/92, December 12, 1992. Accessed January 2, 2012
http://www.europarl.europa.eu/summits/edinburgh/default_en.htm

Council of the European Union. “Council Decision of 26 July 2010 establishing the organization and functioning of the External Action Service,” (2010/ 407/EU), OJ L 201/30, August 3, 2010.

Council of the European Union, “Outcome of EU Italian Presidency Seminar ‘Towards more orderly and managed entry in the EU of persons in need of international protection’ (Rome 13-14 October 2003),” 14987/03, November 18, 2003.

Council of the European Union. “Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals,” OJ L 149/34, June 2, 2001,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0040:en:NOT;>

Council of the European Union. “Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas,” OJ L 334/169, December 19, 2007. Accessed January 1, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1219%2811%29:EN:HTML>

Council of the European Union. “Agreement between the European Community and Ukraine on the facilitation of the issuance of visas - Protocol - Declaration - Joint Declarations,” Official Journal L 332/68, December 18, 2007. Accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1218%2802%29:EN:HTML>

Council of the European Union. "Council Decision of 29 November 2007 concerning the conclusion of the Agreement between the European Community and Ukraine on readmission of persons." OJ L 332/46. December 18, 2007. Accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0046:0047:EN:PDF>

Council of the European Union. "Council Decision authorising the Commission to open negotiations for the conclusion of a readmission agreement between the European Union and Belarus." 6623/11, May 5 2011. Accessed January 1, 2012

<http://register.consilium.europa.eu/pdf/en/11/st06/st06623-ex01.en11.pdf>

Council of the European Union. "Thessaloniki European Council 19 and 20 June 2003 Presidency Conclusions," 11638/03, October 1, 2003. Accessed January 1, 2012

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf

Council of the European Union. "Copenhagen European Council 12 and 13 December Presidency Conclusions," 15917/02, January 29, 2003. Accessed January 1, 2012,

http://www.consilium.europa.eu/press/press-releases/european-council.aspx?target=2002_&bid=76&lang=en&id=.

Council of the European Union. "Brussels European Council 15/16 December 2005 Presidency Conclusions," 15914/1/05 REV 1, January 30, 2006.

Council of the European Union. "The European Pact on Immigration and Asylum (13440/08)," September 24, 2008 (07.10). Accessed January 8, 2012

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/jl0038_en.htm.

Council of the European Union. "Joint Declaration on a Mobility Partnership between the European Union and the Republic of Moldova," 9460/08 ADD 1, May 21, 2008. Accessed January 1, 2012

<http://register.consilium.europa.eu/pdf/en/08/st09/st09460-ad01.en08.pdf>

Council of the European Union. "2450th Council session-External Relations," 12134/02 (Presse 279) September 30, 2002. Accessed January 7, 2012

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/72321.pdf.

Council of the European Union. "Modification of the terms of reference of the High Level Working Group on Asylum and Migration (HLWG)," 9433/02 limite, May 30, 2002.

Council of the European Union. "2436th meeting of Council of the European Union (Justice and Home Affairs and Civil Protection) - Addendum 1 to List A Items," 982/02 ADD 1, June 12, 2002 (13.06). Accessed January 8, 2012

<http://register.consilium.europa.eu/pdf/en/02/st09/st09825-ad01.en02.pdf>.

Council of the European Union. “Council Decision authorising the Commission to open negotiations for the conclusion of a readmission agreement between the European Union and Belarus.” 6623/11, May 5, 2011.

Council of the Union. “General Affairs and External Relations Council Conclusions, Luxembourg, 10369/03 (Presse 166), June 16, 2003. Accessed January 7, 2012, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/76201.pdf.

Council of the European Union. “Joint Declaration of the Paris Summit for the Mediterranean, 13 July 2008,” 11887/08 (Presse 213), July 15, 2008. Accessed January 7, 2012, <http://register.consilium.europa.eu/pdf/en/08/st11/st11887.en08.pdf>.

Council of the European Union. “Council Decision of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty (2004/927/EC),” OJ L 396/45, December 31, 2004. Accessed January 8, 2012 http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_396/l_39620041231en00450046.pdf.

Council of the European Union. “On the Creating of an Ad Hoc Support Committee concerning the external dimension of JHA questions,” 14431/01/08, October 28, 2008

Council of the European Union. “Joint Declaration of the Prague Eastern Partnership Summit 7 May 2009,” May 7, 2009, 8435/09 (Presse 78).

Council of the European Union. “Joint Declaration on the EU-Ukraine Association Agreement, EU-Ukraine Summit 9 September 2008,” 12812/08 (Presse 247) September 9, 2008. Accessed January 7, 2012 http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/102633.pdf.

Council of the European Union. “Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data,” OJL 261, August 6, 2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0082:EN:HTML>.

Council of the European Union. “Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (2004/573/EC), ” OJL 261/28, August 6, 2012 <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2004:261:SOM:EN:HTML>.

Council of the European Union. “Presidency Conclusions, the Hague Programme: Strengthening Freedom, Security and Justice in the European Union Annex I,” (14292/1/04 REV 1 11), November 4-5, 2004.

Council of the European Union. "Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries ("London Resolution")," November 30, 1992. Accessed January 08, 2012 <http://www.unhcr.org/refworld/publisher,COUNCIL,,,3f86c3094,0.html>.

Council of the European Union. "Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention", OJ L 405, December 31, 2006. Accessed January 8, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:405:0001:0022:EN:PDF>.

Council of the European Union. "The Hague Programme: Strengthening Freedom, Security and Justice in the EU, 2005/C/01. (OJ C53/1), March 3, 2005.

Council of the European Union. "EU Action Plan on Justice and Home Affairs in Ukraine" (Text approved by the Council on 10 December 2001) OJ C 77/01, 29 March 2003.

Council of the European Union. "Presidency Conclusions Tampere European Council," 15-16 October 1999. Accessed January 8, 2012 http://www.europarl.europa.eu/summits/tam_en.htm.

Council of the European Union. "Council Regulation No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement" OJ L 81/1, March 21, 2001 Accessed January 8, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>.

Cram, Laura. *Policy-Making in the European Union: Conceptual Lenses and the Integration Process*. London: Routledge, 1997.

Cremona, Marise and Hillion, Christophe. "L'Union fait a force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy," in *European Neighbourhood Policy: the Case of Ukraine*, eds N. Copsey and A. Mayhew. Brighton: Sussex European Institute, 2007.

Cyrus, Norbert. German Country Report- Undocumented Migration-Counting the Uncountable. Data and Trends Across Europe. Clandestino Research Project - 6th Framework, 2008 (Revised in December 2009).

De Capitani, Emilio. "The evolving role of the European Parliament in the AFSJ." In *The Institutional Dimension of the European Union's Area of Freedom, Security and Justice*, edited by Joerg Monar, 113-44. Brussels: Peter Lang., 2010.

De Schoutheete, Phillippe. "The European Council" in *The Institutions of the European Union*, ed. John Peterson and Michael Shackleton, 2nd. Oxford: Oxford University Press, 2006.

Declaration number 5 on Article 67 of the Treaty establishing the European Community, Treaty of Nice, OJ 2001 C 80, March 10, 2001. Accessed January 8, 2012 http://eur-lex.europa.eu/en/treaties/dat/12001C/htm/C_2001080EN.000101.html.

Del Sarto, Raffaella A. and Schumacher, Tobias. "From EMP to ENP : what's at stake with the European neighbourhood policy towards the southern Mediterranean?," *European Foreign Affairs Review* 10, no.1 (2005): 17-38.

Delegation of the European Union to Belarus. "Joint Statement by the EU and Belarus on the EU Migration Mission to Belarus of 7-9 September 2009," September 10, 2009. Accessed January 07, 2012 http://ec.europa.eu/delegations/belarus/press_corner/all_news/news/2009/20090910_01_en.htm.

Delegation of the European Union to Ukraine. "Conclusions on the visit of the EU migration mission of 22 September 2010" September 29, 2010. Accessed January 12, 2012 http://eeas.europa.eu/delegations/ukraine/press_corner/all_news/news/2010/2010_09_29_1_en.htm.

Delreux, Tom. The European Union in international environmental negotiations: a legal perspective on the internal decision-making process," *International Environmental Agreements* 6 no. 3 (2006): 231-248.

Dragneva, Rilka and Wolczuk, Kataryna. "EU Law Expert to the Eastern Neighbourhood," in *EU External Relations Law and Policy in the Post-Lisbon Area* ed. Paul James Cardwell .The Hague: T.M.C. Asser Press, 2012.

Eeckhout, Piet. *External Relations of the European Union: Legal and Institutional Foundations*. Oxford: Oxford University Press, 2004.

Eriksson, Kerstin I. "Removal-enforcement of return decisions," Paper prepared for the European Commission hearing on a community return policy on illegal residents ,July 16, 2002. Accessed January 8, 2012 http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0019_en.htm.

Ette, Andreas and Gerdes, Jurden. "Against Exceptionism: British Interests for Selectively Europeanizing its Immigration Policy in *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union* eds. Thomas Faist and Andreas Ette. Basingstoke: Palgrave Macmillan, 2007.

"EU and Russia launch new partnership for modernization," EU Press Release, IP/10/649, June 1, 2010. Accessed January 8, 2012 <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/649>.

“EU Ukraine Cooperation Council 14th meeting,” EU Press Release, 11102/10 Presse 181, June 15, 2010. Accessed January 8, 2012

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/er/115187.pdf

European Commission. “Relations with Russia,” COM(2004) 106, February 10, 2004. Accessed January 7, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0106:FIN:EN:PDF>.

European Commission. “The Hague Programme: Ten priorities for the next five years: The Partnership for European renewal in the field of Freedom, Security and Justice,” COM (2005) 184 final, June 10, 2005.

European Commission. “European Neighbourhood Policy-Country Report- Ukraine,” COM (2004) 373 final, May 12, 2004.

European Commission. “Evaluation of EU Readmission Agreements,” COM (2011) 76 final, February 23, 2011.

European Commission. “Integrating migration issues in the European Union’s relations with third countries,” COM (2002) 703 final. Accessed January 2, 2012

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2002&nu_doc=703.

European Commission. “Outcome of the screening of legislative proposals pending before the Legislator,” COM (2005) 462 final, September 27, 2005.

European Commission. “What the EU could bring to Belarus? Non paper,” November 2006. Accessed January 2, 2012

http://eeas.europa.eu/delegations/belarus/documents/eu_belarus/non_paper_1106.pdf

European Commission. “Commission Decision on the ENPI Annual Action Programme 2007 in favour of Ukraine to be financed under Article 19 08 01 03 of the general budget of the European Communities (Annex II)”, Action Fiche for Readmission Related Assistance and EUBAM-flanking Measures. Accessed January 8, 2012,

http://ec.europa.eu/europeaid/documents/aap/2007/ec_aap-2007_ua_en.pdf.

European Commission. “Communication on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin ‘Improving Access to Durable Solutions’.” COM (2004) 410 final, June 4, 2004. Accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0410:FIN:EN:PDF>.

European Commission. “Migration and development: Some concrete orientations,” Brussels: Communication from the Commission to the Council, the European

Parliament, the European Economic and Social Committee and the Committee of the Regions, COM (2005) 390 Final, September 1, 2005.

European Commission. “Communication on Regional Protection Programmes.” COM (2005) 388, September 1, 2005. Accessed January 1, 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0388:FIN:EN:PDF>.

European Commission. “Wider Europe–neighbourhood: a new framework for relations with our eastern and southern neighbours.” COM (2003) 104 final, 2003. Accessed 01/01/12 http://ec.europa.eu/world/enp/documents_en.htm.

European Commission. “European Neighbourhood Policy Strategy Paper.” COM (2004) 373 final, 2004. Accessed 01/01/12,
http://ec.europa.eu/world/enp/documents_en.htm.

European Commission. “The general approach to enable ENP partner countries to participate in Community agencies and Community programmes,” COM (2006) 724 final. Accessed January 2, 2012 http://ec.europa.eu/world/enp/pdf/com06_724_en.pdf.

European Commission. “Policy Plan on Legal Migration,” COM (2005) 669 final, December 21, 2005.

European Commission. Home Affairs, Cooperation with third countries on migration Accessed January 8, 2012
http://ec.europa.eu/home-affairs/policies/immigration/immigration_relations_en.htm.

European Commission. “Comprehensive Monitoring Report for Poland’s preparations for membership.” 2003. Accessed January 1, 2012,
http://ec.europa.eu/development/body/organisation/docs/CMR_PL.pdf

European Commission. “Proposal for a Council Regulation on the establishment of a regime of local border traffic at the external land borders of the Member States,” COM (2003) 502 final, August 14, 2003.

European Commission. “Council Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country, OJ C 274, September 19, 1996. Accessed January 8, 2012
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996Y0919\(07\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996Y0919(07):EN:HTML).

European Commission. “Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities,” COM (2001) 386, July 11, 2001.

European Commission. “Outcome of the screening of legislative proposals pending before the Legislator,” COM (2005) 462 final, September 27, 2005.

European Commission. "Commission Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation." COM (2007) 504 final, September 5, 2007. Accessed January 1, 2012

[http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0504%2801%29:EN:HTML)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0504%2801%29:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0504%2801%29:EN:HTML)

European Commission. "Proposal for a Council Decision concerning the signing of the Agreement between the European Community and Ukraine on readmission." COM(2007) 197 final, April 18, 2007. Accessed January 1, 2011

[http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0197:FIN:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0197:FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0197:FIN:EN:PDF).

European Commission Staff Working Document. "Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents," SEC (2009) 320 final, 2009.

European Commission. "Communication in view of the European Council of Thessaloniki on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents," COM (2003) 323, June 3, 2003.

Commission Staff Working Document. "Accompanying the Communication from the Commission to the Council and the European Parliament 'Implementation of the European Neighbourhood Policy in 2007,'" SEC (2008) 403, April 3, 2008

http://ec.europa.eu/world/enp/pdf/progress2008/sec08_403_en.pdf

European Commission. "EU/Ukraine ENP Action Plan, 2004 (adopted 21 February 2005); European Commission, "EU/Moldova ENP Action Plan, 2004 (adopted on 22 February 2005).

European Commission. "Regular Report from the Commission on Poland's Progress towards Accession," October 13, 1999. Accessed January 8, 2012

http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/poland_en.pdf

European Commission. "Barcelona Process: Union for the Mediterranean," COM (2008) 319 final, May 20, 2008. Accessed January 2, 2012

[http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0319:EN:HTML)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0319:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0319:EN:HTML).

European Commission. "Communication from the Commission to the Council and the European Parliament on the right of asylum, Discussion Paper on the Right to Asylum," SEC (91) 1857, October 11, 1991.

European Commission. "Green paper on an EU approach to managing migration," COM (2004) 811 final, January 11, 2005. Accessed January 7, 2012

http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0811en01.pdf.

European Commission. “Communication on the global approach to migration one year on: towards a comprehensive European migration policy,” COM (2006) 735 final, November 30. Accessed January 1, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0735:EN:HTML>.

European Commission. “Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations,” COM (2004) 401 final, June 2, 2004.

European Council. “Common Strategies of the European Union of 4 June 1999 on Russia,” OJ L 157, June 24, 1999 1999. Accessed January 2, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999E0414:EN:HTML>.

European Council. “Common Strategies of the European Council of 19 June 2000 on the Mediterranean region,” OJ L 183, July 22, 2000. Accessed January 2, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000E0458:EN:HTML>.

European Council. “Common Strategies of the European Union of 11 December 1999,” OJ L 331, December 23, 1999. Accessed January 2, 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999E0877:EN:HTML>.

European Council. “A Secure Europe in a Better World: European Security Strategy.” Accessed January 7, 2012

<http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

European Council. “The Stockholm Programme, an Open and Secure Europe Serving and Protecting Citizens” (2010/C 115/01), May 4, 2010.

European Migration Network – Annual Report 2006 – Sweden. Available at: <http://emn.intrasoft-intl.com/html/index.html> Annual Policy Report 2006

European Migration Network – Annual Report (2009). Available at: <http://emn.intrasoft-intl.com/html/index.html> Annual Policy Report 2009

European Parliament. “LIBE Committee-European Parliament resolution on the Policy Plan on legal migration,” A6-0322/2007 / P6-TA-PROV(2007)0414, 26 September 26, 2007.

European Parliament. “Legislative resolution of 13 November 2007 on the proposal for a Council decision on the conclusion of the Agreement between the European Community and Ukraine on the facilitation of issuance of short-stay visas (COM(2007)0190 — C6-0187/2007 — 2007/0069(CNS)),” P6_TA(2007)0493.

European Parliament. "Legislative resolution of 13 November 2007 on the proposal for a Council decision on the conclusion of the Agreement between the European Community and Republic of Moldova on the facilitation of issuance of short-stay visas (COM(2007)0488 — C6-0339/2007 2007/0175(CNS)),” P6_TA(2007)0495.

European Council on Refugees and Exiles. "Protection in third countries". Accessed January 8, 2012
<http://www.ecre.org/topics/areas-of-work/introduction/41-protection-in-third-countries.html>

Eurostat Asylum Applications Data
http://epp.eurostat.ec.europa.eu/tgm/web/_download/Eurostat_Table_tps00021HTMLD_esc.htm.

External Borders Fund 2007-2013 –Poland (2009),” IP/09/108. Accessed January 8, 2012
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/108&format=HTML&aged=1&language=EN&guiLanguage=en>.

Federal Ministry of Interior. (2008) Migration and Integration: Residence law and policy on migration and integration in Germany, Berlin.

Federal Republic of Germany. the Federal Government's Response to the Green Paper on an EU approach to managing an economic migration - Commission of the European Communities document COM(2004) 811 final of 11 January 2005.” Accessed January 7, 2012
http://ec.europa.eu/home-affairs/news/consulting_public/0016/contributions/germany_en.pdf.

Fredén, Jonas. "Center-right wins Swedish election - but short of majority," September 23, 2010. Accessed January 8, 2012
<http://www.sweden.se/eng/Home/Society/Government-politics/Reading/Center-right-wins-Swedish-election--but-short-of-majority/>.

Freedman, Jane. *Immigration and Insecurity in France*. Aldershot: Ashgate, 2004.

Freeman, Gary P. "Modes of Immigration Politics in Liberal Democratic States," *International Migration Review* 29, no. 4 (1995): 881-902.

Friis, Lykke and Murphy, Anna. "The European Union and Central and Eastern Europe; Governance and Boundaries," *Journal of Common Market Studies* 37, no. 2 (1999): 211-232.

Gänzle, Stefan. "EU Russia Relations and the Repercussions." in *Europe's Last Frontier? Belarus, Moldova and Ukraine between Russia and the European Union* eds. Oliver Schmidtke and SerhyYekelchyk .London: Palgrave: 2008.

Garrett, Geoffrey and Tsebelis, George. "An institutional critique of intergovernmentalism," *International Organization* 50, no. 2 (1996): 269-99.

Geddes, Andrew. "International Migration and State Sovereignty in an Integrated Europe," *International Migration* 39, no. 6 (2001): 21-42.

Geddes, Andrew. "Getting the best of both worlds? Britain, the EU and migration policy," *International Affairs* 81, no.4 (2005): 723-740.

Geddes, Andrew. "Europe's Border Relationships and International Migration Relations," *Journal of Common Market Studies* 43, no.4 (2005): 787-806.

Geddes, Andrew. *The Politics of Migration and Immigration in Europe*. Palgrave: London, 2003.

Geddes, Andrew. *Migration as foreign policy?: the external dimension of EU action on migration and asylum*. Stockholm: SIEPS, 2009.

<http://www.sieps.se/en/publikationer/migration-as-foreign-policy-20092>

George, Alexander L. and Bennett, Andrew. *Case Studies and Theory Development in the Social Sciences*. Cambridge: MIT Press, 2005.

George, Stephan and Bache, Ian. *Politics in the European Union*. Oxford: Oxford Press, 2001.

German Federal Office for Migration and Refugees (BAMF/EMN). (2011) "Circular and Temporary Migration Empirical Evidence, Current Policy Practice and Future Options in Germany Research Study in the Framework of the European Migration Network (EMN)", Nurnberg.

Goldirova, Renata. "'Eastern Partnership' could lead to enlargement" Poland says," *EUobserver*, May 27, 2008, Brussels. Accessed January 7, 2012 <http://euobserver.com/9/26211>.

Government Offices of Sweden. "Statement of government policy in the parliamentary debate on foreign affairs, 10 February 1999 (Unofficial Translation)." Accessed January 7, 2012 <http://www.regeringen.se/sb/d/10275/a/70230>.

Government Offices of Sweden. "Statement of government policy in the parliamentary debate on foreign affairs 15 February 2006." Accessed January 9, 2012 <http://www.regeringen.se/sb/d/10275/a/70230>.

Government Offices of Sweden. "Strategy for development cooperation with Belarus (2007-2010)." Accessed January 8, 2012 <http://www.regeringen.se/sb/d/574/a/39761>.

Government Offices of Sweden. "Strategy for development cooperation with the Republic of Moldova (January 2007 – December 2010)." Accessed January 8, 2012 <http://www.regeringen.se/sb/d/574/a/93988>.

Government offices of Sweden. "Statement of government policy in the parliamentary debate on foreign affairs," (Unofficial Translation), February 9, 2000.

Government offices of Sweden. "Statement of government policy in the parliamentary debate on foreign affairs," (Unofficial Translation), February 12, 2003.

Government offices of Sweden. "Statement of Government Policy in the Parliamentary Debate on Foreign Affairs," (Unofficial Translation) February 9, 2005.

Government Offices of Sweden. "Work programme for the Swedish Presidency of the EU 1 July-31 December 2009," June 23, 2009. Accessed January 8, 2012
<http://www.regeringen.se/sb/d/11312/nocache/true/dictionary/true>

Grabbe, Heather. "Stabilising the East while keeping out the Easterners" in *Externalities of Integration: The Wider Impact of The Developing European Asylum and Immigration Policy*, eds. Sandra Lavenex and Emek Uçarer. Philadelphia: Lexington Books, 2003.

Grabbe, Heather. "The Sharp Edges of Europe: Extending Schengen Eastwards," *International Affairs* 76, no.3 (2000): 519-536.

Green-Pedersen, Christoffer and Krogstrup, Jesper. "Immigration as a political issue in Denmark and Sweden," *European Journal of Political Research* 47 (2008): 610–634.

Green-Pedersen, Christoffer and Krogstrup, Jesper. "Going different ways? Right-wing parties and the immigrant issue in Denmark and Sweden", in *Immigration and Integration Policy in Europe: Why Politics – and the Centre-Right Matter* ed. Tim Bale. Oxon: Routledge, 2009.

Guild, Elspeth and Carrera, Sergio. "The Hague Programme & the EU's agenda on 'Freedom, Security and Justice: Delivering results for Europe's citizens?," *CEPS*, July 2006.

Guiraudon, Virginie. "European Integration and Migration Policy: Vertical Policy Making as Venue Shopping," *Journal of Common Market Studies* 38, no.2 (2000): 251-71.

Hall Peter A. and Taylor, Rosmary C. R. "Political Science and the Three New Institutionalism," *Political Studies* 44 (1996): 936-957.

Hammar, Tomas. "Sweden" in *European Immigration Policy-A Comparative Study* ed. Hammar. Cambridge: Cambridge University Press, 1985.

Hargreavesm, Aleg. *Immigration and race and ethnicity in contemporary France*. London: Routledge, 1995.

Hawley, Charles. "Political Scandal: Joschka Fischer with His Back Against the Wall," *Spiegel Online International*, February 22, 2005. Accessed January 7, 2012,

<http://www.spiegel.de/international/0,1518,343108,00.html>.

Hayes Ben and Bunyan, Tony. "Migration, Development and EU Security Agenda," in *Europe in the World: Essays on EU Foreign, Security and Development Policies* (London: Bond, 2003), available: <http://www.statewatch.org/news/2003/sep/bhtb.pdf>.

Hayes-Renshaw, Fioana, Aken, Wim van and Wallace, Helen. "When and Why Council of Ministers of the EU Votes Explicitly?," *Journal of Common Market Studies* 44, no.1 (2006): 161-94.

Hayes-Renshaw, Fiona and Wallace, Helen. *The Council of Ministers*, 2nd. Houndmills, Palgrave Macmillan, 2006.

Hillion, Christophe and Mayhew, Alan. "The Eastern partnership-something new or window dressing?," SEI Working Paper 119. Brighton: Sussex European Institute: 2009.

Hillion, Christophe "The post-Lisbon EU system of external relations: Implications for EU-Ukraine relations," *Wider Europe Working Papers* 5 (2010).

Hix, Simon. "The Study of the European Community: The Challenge to Comparative Politics," *West European Politics* 17, no.11 (1994): 1-30.

Hoffman, Stanley. "Reflections on the Nation-state in Western Europe Today," *Journal of Common Market Studies* 21 no.1 (1982): 21-38.

Hoffmann, Stanley. "Obstinate or Obsolete? The Fate of the Nation-state and the Case of Western Europe," *Daedalus* 95, no. 3 *Tradition and Change* (Summer, 1966): 862-915.

Hollifield, James F. "France: Republicanism and the Limits of Immigration Control," in *Controlling Immigration: a global perspective* eds. Wayne A. Cornelius et al. 2nd. Stanford: Stanford University Press: 2004.

Home Office UK Border Agency. Annual Limit Tier 1 and Tier 2 visa applications, 24 November 2010. Accessed January 8, 2012 <http://www.ukba.homeoffice.gov.uk/sitecontent/newsfragments/35-t1-t2-annual-limits>.

Human Rights Watch, *European Union: Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees*, October 17, 2006. Accessed January 8, 2012 <http://www.unhcr.org/refworld/docid/4565dfbb4.html>.

Iglicka, Krystyna. "Migration Movements from and into Poland in the light of East-West European Migration," *International Migration* 39, 1 (2001).

Iglicka, Krystyna, Kaźmierkiewicz, Piotr and Weiner, Agnieszka. "Poland." In *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*,

edited by Jan Niessen, Yongmi Schibel and Cressida Thompson. Brussels/Warsaw, Migration Policy Group, 2005. Available at:
http://www.migpolgroup.com/publications_detail.php?id=119.

Johansson-Nogues, Elisabeth. "A 'ring of friends'? The implications of the European Neighbourhood Policy for the Mediterranean," *Mediterranean Politics* 9, no. 2 (2004): 240-247.

Joint letter on Wider Europe by Commission Chris Patten and High Representative Solana 8 August 2002. Accessed January 1, 2012
http://ec.europa.eu/world/enp/pdf/_0130163334_001_en.pdf.

Joint Statement by the EU and Belarus on the EU Migration Mission to Belarus of 7-9 September, 2009 (10/09/2009)
http://ec.europa.eu/delegations/belarus/press_corner/all_news/news/2009/20090910_01_en.htm.

Judge David and Earnshaw, David. *The European Parliament* Houndmills: Palgrave Macmillan, 2008.

Kazmierkiewicz, Piotr. *The Polish Experience in Controlling Illegal Migration- Lessons for EU Candidates and Neighbours*. Warsaw: Institute of Public Affairs, 2007. Available at:
www.isp.org.pl/files/3938901520389034001173362029.pdf.

Kelley, Judith. "New Wine in old skins: policy adaptation in the European neighbourhood policy," *Journal of Common Market Studies* 44 (2006): 29-55.

Kempre, Iris. "The German Impact on the ENP." in *The New Neighbourhood Policy of the Union, Foreign Policy in Dialogue*, 2006 (19).

Keohane Robert O. and Hoffmann, Stanley. "Institutional Change in Europe in the 1990s" in *The New European Community: Decision Making and Institutional Change* eds. Robert O. Keohane and Stanley Hoffman. Boulder: Westview, 1991.

Kicinger, Anna, Weiner Agnieszka and Gorny Agatha. "Advance yet uneven: The Europeanization of Polish Immigration Policy" in *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union* eds. Thomas Faist and Andreas Ette. Basingstoke: Palgrave Macmillan, 2007.

Lane, David. "In or Out of Europe? What prospects for Ukraine?," *Perspectives on European Politics and Society* 8, no.4 (2007): 495-504.

Layton-Henry, Zig. "Britain: Immigration Control to Migration Management" in *Controlling Immigration: a global perspective* eds. Wayne A. Cornelius et al. 2nd. 301-11. Stanford: Stanford University Press: 2004.

Lavenex, Sandra and Ucarer, Emek. "The External Dimension of Europeanization: The case of immigration policies," *Cooperation and Conflict* 39 no.4 (2004): 417–443.

Lavenex, Sandra. "Justice and Home Affairs: Communitarization with Hesitation," in *Policy making in the European Union* eds. H. Wallace, M.A. Pollack and A.R. Young, 6th ed. 457-477. Oxford: Oxford University Press, 2010.

Lavenex, Sandra. "EU External Governance in 'wider Europe'," *Journal of European Public Policy* 11, (2004): 680–700.

Lavenex, Sandra. *Safe third countries: extending the EU asylum and immigration policies to Central and Eastern Europe*. Budapest, Central European University Press, 1999.

Lavenex, Sandra. "Shifting Up and Out: The Foreign Policy of European Immigration Control," *West European Politics* 29, no.2 (2006): 329-350.

Lavenex, Sandra. "A governance perspective on the European neighbourhood policy: integration beyond conditionality?," *Journal of European Public Policy* 15, no.6 (2008): 938-955.

Lefebvre, Maxime. "France and the European Neighbourhood Policy." in *The New Neighbourhood Policy of the Union. Foreign Policy in Dialogue* 19 (2005).

Leonard, Sarah and Kaunert, Christian. "Reconceptualising the audience in securitization theory," in *Securitization Theory: How Security Problems Emerged and Solved*, ed. Thierry Balzacq. Oxon: Routledge, 2011.

Lewis, Jeffrey. "The methods of community in EU decision-making and administrative rivalry in the Council's infrastructure," *Journal of Public Policy* 7, no.2 (2000): 261-89.

Maccanico, Yasha. "France: Collective expulsions of Roma people undermines EU's founding principles," *Statewatch Journal* 20, no. 2 (2010). Available at: <http://database.statewatch.org/article.asp?aid=30002>.

March, James G. and Olsen, Johan P. "The Institutional dynamics of international political orders," *International Organization* 52 no.4 (1998): 943-969.

March, James G. And Olsen, Johan P. "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review* 78 (1984): 734-49.

Marthaler, Sally. "Nicolas Sarkozy and the politics of French immigration," *Journal of European Public Policy* 15, no.3 (2008): 382–397.

Martin, Philip L. "Germany: Managing Migration in the Twenty-First Century." In *Controlling Immigration: a global perspective* eds. Wayne A. Cornelius et al. 221-253. 2nd .Stanford: Stanford University Press, 2004.

Mayhew, Alan. *Ukraine and the European Union: financing accelerating integration*, UKIE Warsaw, December 2008.

Mayhew, Alan. *Recreating Europe: The European Union's policy towards Central and Eastern Europe*. Cambridge: Cambridge University Press, 1998.

Ministry of Foreign Affairs of the Republic of Poland, Address by Polish Minister of Foreign Affairs, Włodzimierz Cimoszewicz, "The Eastern Dimension of the European Union. The Polish View." at the Conference "The EU Enlargement and Neighbourhood Policy", Warsaw, 20th February, 2003

http://www.msz.gov.pl/20_lutego,2003r.,-The-Eastern-Dimension-of-the-European-Union-The-Polish-View-Speech-by-Wlodzimirz-Cimoszewicz-Polish-Minister-of-Foreign-Affairs-at-the-Conference-The-EU-Enlargement-and-Neighbourhood-Policy-Warsaw-20-February-2003,1305.html.

Ministry of Foreign Affairs of the Republic of Poland. An Interview with Prime Minister of the Republic of Poland Donald Tusk, June 16, 2008. Accessed January 7, 2012

http://www.msz.gov.pl/index.php?page=13181&lang_id=en&bulletin_id=16&document=2081#_Toc204493485.

Ministry of Foreign Affairs of the Republic of Poland. "Statement by Prime Minister of the Republic of Poland Jaroslaw Kaczynski on EU Council voting system," June 18, 2007. Accessed January 7, 2012

http://www.msz.gov.pl/index.php?page=10998&lang_id=en&bulletin_id=16&document=2081#_Toc173664359.

Ministry of Foreign Affairs of the Republic of Poland. Statement by President of the Republic of Poland Lech Kaczynski during EU summit in Finland, October 20, 2006. Accessed January 8, 2012

http://www.msz.gov.pl/index.php?page=9597&lang_id=en&bulletin_id=16&document=2081

Ministry of Foreign Affairs of the Republic of Poland. "Address by Foreign Minister of the Republic of Poland Radosław Sikorski on the goals of the Poland's foreign policy for 2009, February 13, 2009. Accessed January 7, 2012

http://www.msz.gov.pl/index.php?page=14662&lang_id=en&bulletin_id=16&document=2081#_Toc225666148.

Ministry of Foreign Affairs of the Republic of Poland. "Address by President of the Republic of Poland Lech Kaczynski during his visit to Lithuania, September 5, 2006. Accessed January 7, 2012

http://www.msz.gov.pl/index.php?page=9596&lang_id=en&bulletin_id=16&document=2081#_Toc148849479.

Ministry of Foreign Affairs of the Republic of Poland. Non-paper with Polish proposals concerning policy towards the new Eastern neighbours after EU enlargement, December 2002.

<http://www.msz.gov.pl/Non-paper,with,Polish,proposals,concerning,policy,towards,the,new,Eastern,neighbours,after,EU,enlargement,2041.html>

Ministry of Interior of Poland. "We need to help the refugees," October 12, 2004. Accessed January 8, 2012
http://www.mswia.gov.pl/portal/en/1/89/We_need_to_help_the_refugees.html?search=439326

Moldova Ministry of Foreign Affairs and European Integration. (2010) Moldova EU Mobility Partnership Newsletter Edition 2. Accessed January 8, 2012
http://www.mfa.gov.md/img/docs/bi_mp_nr2_en.pdf

Monar, Joerg. "Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion', One Europe or Several?," *SEI Working Paper* 07/00. Brighton: Sussex European Institute, 2000.

Monar, Joerg. "The justice and home affairs dimension of EU enlargement," *The International Spectator* 36 no.3 (2001): 37-46.

Monar, Joerg. "The area of freedom, security and justice after the 2004 enlargement," *The International Spectator* 38 no.1 (2003): 33-50.

Monar, Joerg. "Justice and home affairs after Amsterdam: the treaty reforms and the challenge of their implementation," in *The European Union after the Treaty of Amsterdam*, eds. J. Monar and W. Wessels 267-295. London: Continuum, 2000.

Moravcsik, Andrew. "Preferences and Power in the European Community: A liberal-intergovernmentalist approach," *Journal of Common Market Studies* 31, no.4 (1993): 473-524.

Moravcsik, Andrew. "Liberal intergovernmentalism and integration: a rejoinder," *Journal of Common Market Studies* 33 (1995): 611-28.

Moravcsik, Andrew. *The Choice for Europe: Social purpose and state power from Messina to Maastricht*. London: University College London Press, 1999.

Moravcsik Andrew and Schimmelfennig, Frank. "Liberal Intergovernmentalism," in *European Integration Theory* eds. Antje Wiener and Thomas Diez. Oxford: Oxford University Press, 2009.

Nilsson, Hans G. "The Justice and Home Affairs Council," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd. London: John Harper Publishing, 2006.

Nilsson, Hans G. and Siegl, Julian. "The Council in the Area of Freedom, Security and Justice" in *The Institutional Dimension of the European Union's Area of Freedom, Security and Justice*, ed J. Monar, Brussels: Peter Lang, 2010.

North, Douglas. *Institutions, institutional change, and economic performance*. Cambridge: Cambridge University Press, 1990.

Ogden, Philip E. "Labour Migration to France," in *The Cambridge Survey of World Migration* ed. Robin Cohen. Cambridge: Cambridge University Press, 1995.

Olofsson, Jenny and Malmberg, Gunnar. "When Will the Russians Come? On Post-Soviet Immigration and Integration in Sweden." *International Migration-IOM* 49, no. 4 (2011) : 93-117.

Patryk, Pawlak. "The External Dimension of the Area of Freedom, Security and Justice: Hijacker or Hostage of Cross-pillarization?," *Journal of European Integration* 31 no.1 (2009): 25-44.

Peers, Steve. "Legislative Update: EU Immigration and Asylum Competence and Decision-Making in the Treaty of Lisbon." *European Journal of Migration Law* 10 (2008): 219-47.

Peers, Steve. "Key Developments on Migration in the European Union," *European Journal of Migration and Law* 3 (2001): 231-55.

Peers, Steve. "Veto, Opt-outs and EU Immigration and Asylum law," *Statewatch Briefing*, 23 December 2004.

Peers, Steve and Rogers, Nicola. *EU Immigration and Asylum Law: Text and Commentary*, Leiden: Brill, 2006.

Peters, Guy. *Institutional theory in political science: the new institutionalism*, 2nd ed. London: Continuum Ltd, 2005.

Peterson, John. "Decision-making in the European Union: towards a framework for analysis," *Journal of European Public Policy* 2, no.1 (1995): 69-93.

Petrov, Roman. "The Partnership and Co-operation Agreements with the Newly Independent States," in *Handbook on European Enlargement*, ed Andrea Ott and Kirstyn Inglis. The Hague: TMC Asser Pressi 2002.

Pierson, Pierson. "The path to European Integration: a historical institutionalist analysis." *Comparative Political Studies* 29 (1996): 123-63.

Piris, Jean Claude. *The Lisbon Treaty: A Legal and Political Analysis*. Cambridge: Cambridge University Press, 2010.

"Polish-Swedish Proposal: Eastern Partnership," Ministry of Foreign Affairs of the Republic of Poland, June 2008. Accessed January 7, 2012
<http://www.msz.gov.pl/Polish-Swedish,Proposal,19911.html>.

Pollack, Mark. "Theorizing the European Union: Realist, Intergovernmentalist and Institutional Approaches," (2010), <http://ssrn.com/abstract=1622912>.

Popescu, Nicu. "Re-setting the Eastern Partnership in Moldova," *CEPS Policy Brief* 199, (2009).

Prodi, Romano. "A Wider Europe – A Proximity Policy as the key to stability" (Speech to the Sixth ECSA-World Conference. Jean Monnet Project. Brussels, 5-6 December 2002) SPEECH/02/619. Accessed January 7, 2012

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/02/619&format=HTML&aged=1&language=EN&guiLanguage=en>.

Prumm, Kathrin and Alscher, Stefan. "From Model to Average Student: the Europeanization of Migration Policy and Politics in Germany" in *The Europeanization of National Policies and Politics of Immigration* eds. Thomas Faist and Andreas Ette. Basingstoke: Palgrave Macmillan, 2007.

Readmission Agreements, Summaries of EU Legislations, Europa. Accessed January 8, 2012 http://europa.eu/legislation_summaries/other/133105_en.htm

"Recommendations from the Chisinau Conference - a step taken towards the integration of the Söderköping Process into the Eastern Partnership", February 2, 2011. Accessed January 8, 2012, <http://soderkoping.org.ua/page28901.html>.

Regeringskansliet, Points of view on the Green Paper on the Future Common European Asylum System, October 1, 2007. Accessed January 8, 2012 http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0010_en.htm.

Risse-Kappen, Thomas. "Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis meet the European Union," *Journal of Common Market Studies* 34, no.1 (1996): 53-80.

Roig Annabelle and Huddleston, Thomas. "EC Readmission Agreements: A Re-evaluation of the Political Impasse," *European Journal of Migration and Law* 9 (2007): 363-387.

Rosamond, Ben. "Conceptualizing the EU Model of Governance in World Politics." *European Foreign Affairs Review* 10 no.4 (2005): 463–478.

Rosamond, Ben. *Theories of European Integration*. Basingstoke: Palgrave, 2000.

Royal Danish Ministry of Foreign Affairs. "Results of Danish EU Presidency, One Europe from Copenhagen to Copenhagen," Copenhagen, 2002.

Schain, Martin A. "The Border: The Immigration Dilemma and the State in France," Prepared for the Biennial Conference of the European Union Studies Association March 3-5, 2011.

Schain, Martin. *The Politics of Immigration in France, Britain and the United States: a comparative study*. New York: Palgrave Macmillan, 2008.

Sedelmeier, Ulrich. "The European neighbourhood policy: a comment on theory and policy." in *Governing Europe's Neighbourhood*, ed. K. Weber, M. Smith and M. Baun, 195-208. Manchester: Manchester University Press, 2006.

Smith, Karen E. "The Outsiders: the European neighbourhood policy," *International Affairs* 81, no.4, (2005): 757-773.

Smith, Michael E. "The European Union and a Changing Europe: Establishing the Boundaries of Order," *Journal of Common Market Studies* 43, no. 1 (1996): 5-28.

Spence, David. "Negotiations, coalitions and the resolution of inter-state conflicts," Westlake & Galloway, in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd. London: John Harper Publishing, 2006.

Sterkx, Steven. "The External Dimension of EU Asylum and Migration Policy: Expanding Fortress Europe," in *EU's global role: external policies of the European Union*, ed. Jan Orbie. Aldershot: Ashgate, 2008.

Stinger, Kevin. "Visa Diplomacy," *Diplomacy and State Craft* 15, no.4 (2004): 655-682.

Summaries of EU Legislations, Europa. Accessed January 8, 2012
http://europa.eu/legislation_summaries/other/l33105_en.htm.

Swedish Ministry of Justice. (2010) Migration Policy- Fact Sheet, Stockholm, 2010.

Swedish Presidency of the EU. "Draft Multiannual programme for an area of Freedom, Security and Justice serving the citizen (The Stockholm Programme)," 14449/09, October 16, 2009. Accessed January 8, 2012
<http://register.consilium.europa.eu/pdf/en/09/st14/st14449.en09.pdf>.

Tansey, Oisin. "Process Tracing and Elite Interviewing: A Case for Non-probability Sampling," *Political Science and Politics* 40 (2007): 765-772.

Trauner, Florian and Kruse, Imke. "EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood," *CEPS Working Document* 290 (2008). Accessed January 2, 2012
<http://www.ceps.be/book/ec-visa-facilitation-and-readmission-agreements-implementing-new-eu-security-approach-neighbour>.

The Euro-Mediterranean Partnership
http://ec.europa.eu/external_relations/euromed/index_en.htm.

The French Ministry of Foreign and European Affairs. "Africa-France: Emphasis on 'concerted' management of migratory flows," Accessed January 8, 2012

http://www.diplomatie.gouv.fr/en/spip.php?page=article_imprim&id_article=8666.

The French Ministry of Immigration. Integration, National Identity and Solidarity Development, 2009 Annual Report- European Migration Network, 2010.

The French Ministry of Immigration. Integration, National Identity and Solidarity Development, 2008 Annual Policy Report-European Migration Network, 2009.

The Schengen Area and Cooperation, Summaries of EU Legislations, Europa. Accessed January 8, 2012

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm.

The Swedish Migration Board-the EU and Migration

http://www.migrationsverket.se/info/217_en.html.

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and related acts, Official Journal C 340/173, November 10, 1997. Accessed January 2, 2012

[http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/CE:EN:HTML)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/CE:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/CE:EN:HTML).

Treaty on European Union (TEU). OJ C 191, July 29, 1992. Accessed January 2, 2012
<http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>.

Tulmets, Elsa. "Is a Soft Method of Coordination Best Adapted to the Context of EU's Neighbourhood?". Paper presented at The European Neighbourhood Policy: A Framework for Modernization? Workshop, 1-2 December 2006, European University Institute, Florence.

Wallace, Helen. "An Institutional Anatomy and Five Policy Models." in *Policy making in the European Union*, ed. H. Wallace, M.A. Pollack and A.R. Young, 6th. 69-104. Oxford: Oxford University Press, 2010.

Wallace, William. "Looking After the Neighbourhood: Responsibilities for the EU-25," *Notre Europe Policy Paper 4* (2003).

Westlake Martin and Galloway, David. "The Permanent Representatives Committee (Coreper)," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd. London: John Harper Publishing, 2006.

Westlake, Martin and Galloway David. "The national negotiator in Council Preparatory Groups," in *The Council of the European Union* eds. Martin Westlake and David Galloway, 3rd. London: John Harper Publishing, 2006.

Whitman, Richard G. and Wolff, Stefan. "Much Ado About Nothing? The European Neighbourhood Policy in Context, Implementation and Impact." In *The European*

Neighbourhood Policy in Perspective, ed. Richard G. Whitman and Stefan Wolff 3-26. Basingstoke: Palgrave Macmillan, 2010.

Wolff, Sarah, Wichmann, Nicole and Mounier, Gregory. "The External Dimension of Justice and Home Affairs: A Different Security Agenda for the EU?" *Journal of European Integration* 31 no.1 (2009): 9-23.

"Ukraine's President Stresses Aim to Join EU," Deutsche Welle, March 9, 2005. Accessed January 7, 2012

<http://www.dw-world.de/dw/article/0,,1513014,00.html>.

"Ukrainian, Polish foreign ministers discuss cooperation, visa-free travel" *PAP News Agency*, May 24, 2010 (retrieved from BBC Monitoring Europe-Political/BBC Worldwide Monitoring).

Ukrainian Deputy Foreign Minister, 'Minister: Ukraine is next for EU visa-free travel.' *Euractiv Interview*, 21 May 2010

<http://www.euractiv.com/en/east-mediterranean/diplomat-ukraine-next-eu-visa-free-travel-interview-494396>.

Ukrainian Foreign Minister: "Foreign Minister: Bridges symbolise change for Ukrainians" (15 December 2010) (updated 12 September 2011), Euractiv Interview. Accessed January 9, 2012

<http://www.euractiv.com/east-mediterranean/foreign-minister-bridges-symbolise-change-ukrainians-interview-500613>.

Van Selm, Joanna. "Immigration and Asylum or Foreign Policy: The EU's Approach to Migrants and Their Countries of Origin," in *Externalities of Integration: The Wider Impact of The Developing European Asylum and Immigration Policy*, eds. Sandra Lavenex and Emek Uçarer. Philadelphia: Lexington Books, 2003.

Ven Evera, Stephen. *Guide to methods for students of political science*. Ithaca: Cornell University Press: 1997.

Vertovec, Steven. "Circular migration: the way forward in global policy?" *COMPAS Working Papers* 4 (2007).

Zielonka, Jan. *European Unbound: Enlarging and reshaping the boundaries of the European Union*, .Taylor and Francis e-Library, 2003.

List of Interviews

Wilhelm Schoenfelder, former German Permanent Representative to the EU, 28th of May 2010, Brussels

Åsa Carlander, Legal counsellor, Permanent Representation of Sweden to the European Union, 1 February 2011, Brussels

Interview with EU Official, A, 25 March 2009, Brussels

Interview with EU Official B, 5 May 2009, Brussels

Interview with EU Official C, 28 May 2010, Brussels

Interview with EU Official D, 13 July 2010, Brussels,

Interview with EU Official E, 2 February 2011, Brussels

Interview with MS Official A, 7 May 2009, Brussels

Interview with MS Official B, 20 May 2009, Brussels

Interview with MS Official C, 4 September 2009, London

Interview with MS Official D, 11 December 2009, London

Interview with MS Official E, 19 January 2010, London

Interview with MS Official F, 8 September 2010, Brussels

Interview with MS Official G, 8 September 2010, Brussels

Interview with MS Official H, 3 February 2011, Brussels

Interview with MS Official I, June 2011, London

Interview with MS Official J, June 2011, London

Interview with MS Official K, June 2011, London

Interview with former official from Polish MFA, 26 May 2010, Brussels

Interview with Commission Official A, 28 May 2010, Brussels

Interview with Commission Official B, 27 May 2010, Brussels

Interview with EP Official 1, February 2011, Brussels

Interview with a European Diplomat, July 2010 Brussels

Interview with a National Expert, September 2009, Berlin

APPENDIX 1:

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Germany	98,654	94,775	78,565	88,285	71,125	50,565	35,605(p)	28,915(p)	21,030(p)	19,165(p)
France	22,375	30,905	38,745	47,290	51,085	59,770(r)	58,545(p)	49,735(r)	30,750(r)	29,160(p)
Poland	3,425	3,060	4,660	4,480	5,170	6,810	7,925(p)	5,240(p)	4,225(p)	7,205(p)
Sweden	12,840	11,220	16,285	23,500	33,015	31,355	23,160(p)	17,530(p)	24,320(p)	36,205(p)
UK	46,015	71,160	80,315	71,365	103,080	60,045	40,625(p)	30,840(p)	28,320(r)	27,905(p)
EU 27	313, 645	380,450	406,585	424, 180	421, 470	344, 800	276, 675(p)	234,675(p)	197, 410(p)	222,635

Table 1. Asylum applications (rounded annual data)¹Source: Eurostat²

Table 2. Asylum applications (rounded annual data)

	2008	2009	2010
EU27	238,365	260,730	257,815
Germany	26945	31810	48490
France	41845	47625	51595
Poland	8515	10595	6540
Sweden	24875	24175	31875
UK ³	30545	29820	23715

Source: Eurostat⁴

¹ In Table 1, (p) indicates 'provisional value' and (r) indicates 'revised value'.

² http://epp.eurostat.ec.europa.eu/tgm/web/download/Eurostat_Table_tps00021HTMLDesc.htm

The Eurostat provide the following explanation with respect to the data, "These figures refer to all persons who apply on an individual basis for asylum or similar protection, irrespective of whether they lodge their application on arrival at the border, or from inside the country, and irrespective of whether they entered the country legally or illegally. Due to different methods of collecting the information, data from different countries may not be entirely comparable."

³ The UK figures for 2008 and 2009 include only the asylum applicants who have submitted an application for the first time.

⁴ 2010 Data: Anthony Albertinelli, Asylum applicants and first instance decisions on asylum applications in 2010, Eurostat Data in focus 5 (2011): 2.

2009 Data: Anthony Albertinelli, Asylum applicants and first instance decisions on asylum applications in 2010, Eurostat Data in focus 18 (2010): 2-3.

2008 Data: Anthony Albertinelli and Piotr Juchno, Asylum applicants and decisions on asylum applications in Q4 2008, Eurostat Data in focus 9(2008): 2-3.